

The Gazette of India

EXTRAORDINARY**PART II—Section 3****PUBLISHED BY AUTHORITY**

No. 289] NEW DELHI, WEDNESDAY, DECEMBER 8, 1954

ELECTION COMMISSION, INDIA**NOTIFICATION***New Delhi, the 16th November 1954*

S.R.O. 3537.—Whereas the election of Shri Ramkrishna Rathor as a member of the Legislative Assembly of the State of Madhya Pradesh, from the Champa constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Thakur Dausingh, son of Shri Sheoprasad Singh, Mouza Pondi (Shankar), Tehsil Janjgir, District Bilaspur (M.P.);

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAIPUR**PRESENT:**

1. Shri T. R. Gosewade, District and Sessions Judge, Raipur,—*Chairman*.
2. Shri M. Rajpai, Additional District Judge, Bilaspur,—*Member*.
3. Shri B. R. Mandlikar, Advocate, Nagpur,—*Member*.

ELECTION PETITION No. 10 of 1953.

Thakur Dausingh, son of Sheoprasad Singh, resident of village Pondi (Shankar), tahsil Janjgir, district Bilaspur, M.P.—*Petitioner*.

Versus

1. Shri Ramkrishna Rathor, son of Mohan, resident of Dharashiv, tahsil Janjgir, district Bilaspur, M.P.
2. Shri Thakur Chhedilal, son of Pachkaudsingh, *Bar-at-Law*, resident of Bilaspur, tahsil and district Bilaspur, M.P.
3. Shri Chinta, son of Gokul, resident of village Dharashiv, tahsil Janjgir, district Bilaspur, M.P.
4. Shri Ratansingh, Advocate, resident of Janjgir, tahsil Janjgir, district Bilaspur, M.P.
5. Shri Thakur Bhuwanbhaskar Singh, son of Pachkaudsingh, resident of village Khatola, tahsil Janjgir, district Bilaspur M.P.—*Respondents*.

1. Shri M. R. Bobde, Advocate, Shri C. M. Otaiwar, Advocate, Shri D. B. Kolte, Pleader, Shri R. G. Tiwari, Pleader,—For the Petitioner.
2. Shri R. M. Hajarnavis, Advocate, Shri M. S. Mendhekar, Pleader, Shri M. S. D. Sharma, Pleader,—For Respondent No. 1.

ORDER

(PRONOUNCED ON THIS 21ST DAY OF OCT. 1954)

This is an election petition, presented under section 81 of the Representation of the People Act, 1951, (XLIII of 1951), challenging the election of the respondent No. 1, Shri Ramkrishna Rathor to the Madhya Pradesh State Legislative Assembly from the Champa Constituency.

2. The respondents Nos. 1 to 5, were nominated candidates at the bye-election held on 3rd May, 1953, for the General seat from the Champa Constituency of the Madhya Pradesh State Legislative Assembly. Respondents Nos. 3 and 4, had withdrawn their candidatures by notices in writing to the Returning Officer within the time specified in that behalf and the nomination paper of respondent No. 5, was rejected during scrutiny of the nomination papers by the Returning Officer. The respondent No. 1, the candidate of the Congress Party, and the respondent No. 2, the candidate of the Praja Socialist Party, were, therefore, the only validly nominated candidates who contested the bye-election in question held on 3rd May, 1953. The respondent No. 1, polled 7,650 votes as against 7,172 polled by the respondent No. 2, the difference being of 478 votes only. Respondent No. 1, was then declared by the Returning Officer of the constituency in question to have been duly elected and the result has been accordingly published in the Madhya Pradesh Extra Ordinary Gazette, dated 9th May, 1953, under section 67 of the Representation of the People Act (XLIII of 1951). Thereafter, notice under rule 113 of the Representation of People (Conduct of Election and Election Petitions) Rules, 1951, that the Return of election expenses and the accompanying declarations of the respondent No. 1, had been lodged with the Returning Officer was published in the Madhya Pradesh Gazette, dated 3rd July, 1953. These facts are undisputed.

3. The case of the petitioner, stated briefly, is that the election of the respondent No. 1, has not been a free election and is void by reason of the alleged corrupt and illegal practices. It is said that the election of the respondent No. 1, has been procured and induced and the result of the election has been materially affected by these illegal and corrupt practices committed by respondent No. 1, himself or by his agents or other persons with his connivance and but for these the respondent No. 1, could not have secured majority of votes and respondent No. 2, would have been elected at the election in question. The said corrupt and illegal practices alleged by the petitioner are as follows.

4. Firstly, it is alleged that the respondent No. 1, himself issued the widely distributed in the constituency a pamphlet Ex-P-1 and thereby induced the electors, the majority of whom are backward, illiterate, religious minded and believers in Gods and Goddesses, to believe that they would be rendered objects of displeasure of Goddess Laxmi and their fortune would forsake them and calamities would befall them, if they did not cast their votes in favour of the respondent No. 1. It was also represented by Ex-P-1 that the ballot box of respondent No. 1, was of Goddess Laxmi and by casting their votes in that box they would get the blessings of Gods and Goddesses.

5. Secondly, Shri Ganeshram Ananta Deputy Minister of Madhya Pradesh, Shri Reshamlal Jangde, M.P., Mahant Anjardas, Mahant Naundas, Shri Mulchand Jangde, Shri Kulpatsingh and Shri Vedram Kurray M.L.As. and Shri Mahabir Kurray of Mouza Pataud, all belonging to Harijan community, it is said, made, with the connivance of respondent No. 1, a systematic appeal by issue and distribution of a pamphlet, of which Ex-P-2 is a copy to the Harijan Community of the constituency that the Harijans as a community or caste should vote for the Congress candidate, respondent No. 1. It is said that they falsely asserted that it was the Congress Party which had given to the Harijans the right of becoming members and ministers in the Legislatures and that the amenities provided by the Government for the Harijan community and the rights given to them were given by the Congress and they further appealed to the Harijans as a community not to vote for the respondent No. 2. It is also alleged that Shri Ganeshram Ananta, Deputy Minister, Madhya Pradesh, by means of an appeal mentioned above and by soliciting votes for respondent No. 1, during his official tour as Deputy Minister, brought

undue influence of his official status on the electors to vote for the Congress candidate, respondent No. 1, who connived at this undue influence.

6. Thirdly, it is alleged that the respondent No. 1, himself and through his agents and other persons widely distributed in the constituency the pamphlet Ex-P-2 purporting to be a statement issued by Shri Indraman Prasad Mahato who is said to be an influential personality in the Janjgir tahsil and the Champa constituency. In the said pamphlet Ex-P-2 Shri Indramanprasad purported to declare that respondent No. 2, was not a person fit to be supported by the people and that he was undertaking a fast in order that good sense should dawn on the respondent No. 2. It is said that respondent No. 1, knew that said Shri Indraman Prasad was one of the staunch supporters of respondent No. 2, in the bye-election in question and by publishing and widely distributing the pamphlet Ex-P-2 containing statements relating to personal character or conduct of respondent No. 2, which respondent No. 1, knew or believed to be false and which were reasonably calculated to prejudice and did prejudice the prospects of the election of the respondent No. 2, a large number of the followers of Shri Indraman Prasad, who were electors in the constituency, were induced not to cast their votes for the respondent No. 2.

7. Fourthly, the respondent No. 1, is said to have got issued a pamphlet Ex-P-3 by one Shri Ishwariprasad Chaturvedi of Akallara and is said to have himself and through his agents and other persons widely distributed the pamphlet Ex-P-3. It is alleged that the said pamphlet contained statements in relation to the personal character and conduct of the respondent No. 2, which the respondent No. 1, knew and believed to be false and that the said pamphlet also contained a statement that calamity would befall the people if they voted for the respondent No. 2, and that it did not bear on its face the name of the printer thereof.

8. Fifthly, it is said that the respondent No. 1, issued and himself and through his agents and other persons widely distributed in the constituency a pamphlet Ex-P-4 under the name of Shri Maluram Kedla, the Secretary of the Tahsil Congress Committee, Janjgir, and it did not bear on its face the name of the printer thereof. It is said to contain imputations against the personal character and conduct of the respondent No. 2, which the respondent No. 1, knew or believed to be false and was calculated to induce the electors of the constituency not to vote for the respondent No. 2, by a threat of a fast.

9. Sixthly, the respondent No. 1, is said to have hired a motor vehicle C.P.L. 339 belonging to Govindram Munshiram, Bilaspur, and utilised it for the conveyance of the electors of Afid to polling station Sonthi on 3rd May, 1953.

10. Seventhly, it is alleged that the Return of Election Expenses filed by respondent No. 1, is false in material particulars as it does not include the expenses incurred by him for printing pamphlets such as Ex-P-1.

11. Eighthly, it is pleaded that Shri Brijlal Biyani, a prominent member of the Congress and the Finance Minister of the Madhya Pradesh, addressed a Political Conference at Naila on or about 25th April, 1953 and public meetings at Champa, Seoni, Sonthi, and Bamnidih on or about 26th April, 1953 and 27th April, 1953, when he exhorted the electors of the constituency in question to vote for the Congress candidate, respondent No. 1, and said that in case they voted for the non-congress candidate, the respondent No. 2, the progress of the Five-Year Plan in the constituency was bound to be hindered and the ballot box of the respondent No. 1, was in fact the box of the Government. The electors of the Champa Constituency were, it is said, thus induced to believe that they would not get the benefit of the Government's Five-Year Plan unless they voted for the Congress candidate, the respondent No. 1. It is also alleged that the respondent No. 1, was present at the said conference and meetings and connived at the statements in question of the Finance Minister and allowed the electors of the constituency to be misled.

12. Ninthly, it is contended that the result of the election has been materially affected by the improper and illegal rejection of the nomination paper of respondent No. 5, Shri Bhuwan Bhasker Singh who is an Elector entered at No. 76 from village Khatola in Akallara-Musturi Constituency of the Madhya Pradesh State Legislative Assembly and was qualified to contest the bye-election from Champa Constituency.

13. On these nine grounds the petitioner seeks that the election of the respondent No. 1, should be declared void and respondent No. 2, should be declared to be duly elected. The particulars of these corrupt and illegal practices including

the names of the parties alleged to have committed such practices and the dates and places of the commission of each such practice are given in the List A appended with the petition and the better and further particulars subsequently furnished by the Petitioner on our directions.

14. The respondent No. 1, alone contested the petition. The case proceeded *ex-parte* as against other respondent who did not put in their appearance.

15. The respondent No. 1, denied all the allegations made by the petitioner which have been stated above. Regarding the use of the word "laxmi" in pamphlet Ex-P-1, according to respondent No. 1, in Chhattisgarh, which includes the Champa constituency in question, bullocks and cows are termed and called as 'Laxmi', and therefore, even if the voters were asked to vote in ballot box of Laxmi, it did not mean that the votes were sought by arousing the religious sentiments of the electors in the names of God or Goddess and it would mean that the electors were asked to vote in the box bearing the symbol of 'Laxmi' i.e., bullocks.

16. Secondly, as regards the alleged appeal to the Harijans, it is alternatively pleaded by the respondent No. 1, that the said appeal was a political appeal and was not addressed to a particular caste or community. It is also said that the removal of the disabilities of the Harijans was always a plank in the political platform of the Congress party re-affirming their policy in this behalf and relying on their record of ameliorating the conditions of Harijans with a view to winning the votes for their party.

17. Thirdly, regarding Ex-P-2, it is said by the respondent No. 1, that it appears that on some previous occasion Indramanprasad had published a pamphlet comprising the second part of Ex-P-2, and the publisher of Ex-P-2 had quoted the same in it and it is, therefore, incorrect to say that the whole of Ex-P-2 purports to be a statement of said Indramanprasad. Regarding the pamphlets Exs.-P-1 to P-4 it is contended that even if all or any of the facts in that behalf are proved to be true, they do not constitute grounds for setting aside the election.

18. Fourthly, regarding the speech of the Finance Minister at Naila and at other public meetings, it is contended by the respondent No. 1, that the Five-Year Plan is an important policy of the Congress Party and asking the electors to express confidence in the Government was a Political exhortation and even if the allegations in that behalf are found to be true, they do not constitute grounds for setting aside the election.

19. Fifthly, it is pleaded by the respondent No. 1, that in democracy the Ministers are not only not prevented from taking part but are on the contrary required to take part in the political activities and electioneering to explain, justify and support their policy to the electorate.

20. Sixthly, it is said that the grounds of rejection of the nomination paper of the respondent No. 5, are proper and its rejection does not affect the result of the election in any manner, and the respondent No. 5, acquiesced in the rejection and did not show any cause against the proposed rejection. It is further said that the respondent No. 5, is the younger brother of respondent No. 2, and was merely a dummy candidate of respondent No. 2, and he told the Returning Officer that inasmuch as he would have withdrawn in any case, he did not object to his nomination paper being rejected.

21. The respondent No. 1, also contended that the petition was liable to be dismissed as it did not conform with the provisions of section 83 of the Representation of the People Act, 1951. This contention was treated as a preliminary issue and was decided by us by our order dated 30th January, 1954, in which we held that there was substantial compliance by the petitioner with sub-sections (1) and (2) of section 83 of the Act and it was not therefore, liable to be dismissed under section 90(4) *ibid*.

22. The following are the issues, which arise out of the pleadings, with our findings thereon.

Issues	Findings
1. Whether the petitioner is an elector entered at No. 582 in village Pondi (Sharkar) in the Electoral Roll of the Champa Constituency of the M. P. State Legislative Assembly ?	Yes.

	Issues	Findings
<p>2. (a) Whether the respondent No. 1 himself issued and widely distributed in the constituency himself and through his agent, a pamphlet Ex-P-1 ?</p> <p>(b) Whether the respondent No. 1 thereby induced the electors of the Constituency to believe that they would be rendered objects of displeasure of Goddess Laxmi and that fortune would forsake them and calamity would befall them if they did not vote in favour of the respondent No. 1 ?</p> <p>(c) Whether the respondent No. 1 and his agents with his connivance induced the electors of constituency to cast their votes in favour of respondent No. 1 by asserting by Ex-P-1 that they would thus secure the blessing and protection of the Gods and Goddesses and that his bailor-box was the ballot-box of Goddess Laxmi and that they should cast their votes in the ballot-box of Goddess Laxmi. ?</p> <p>(d) Whether a vast majority of the electors of the constituency are backward illiterate, religious minded and believed in Gods and Goddesses like Brahma, Vishnu, Mahesh, Ganesh, Bhawani and Laxmi ?</p>		<p>I-part : No. II-part : No.</p> <p>I-part : No. II-part : No.</p> <p>I-part : No. II-part : No.</p> <p>Yes.</p>
<p>3. (a) Whether Shri Reshamlal Jangde M. P., Shri Ganeshram Anant, Deputy Minister, Mahant Anjoradas M. L. A., Mahant Naindas M. L. A., Shri Mulchand Jangde, Shri Kulpat Singh, Shri Vedram, M. L. As. of Madhya Pradesh, and Shri Mahabir Kurray of village Kataud, all belonging to Harijan Community, made a systematic appeal to the Harijan Community of the Constituency that the Harijans as a community or caste should vote for respondent No. 1 ?</p> <p>(b) Whether they did so by falsely asserting that it was the Congress party which had given to the Harijans the right of becoming members and Ministers in the various Legislatures and that the amenities or the rights provided by the Government for the Harijan Community were given by the Congress ?</p> <p>(c) Whether they thus appealed to the Harijans as a community not to vote for respondent No. 2 ?</p> <p>(d) Whether they did all this with the connivance of respondent No. 1 ?</p>		<p>No.</p> <p>No. The appeal did not contain any false assertion.</p> <p>Yes.</p> <p>No.</p>
<p>4. (a) Whether Shri Ganeshram Anant by an appeal and by soliciting votes for respondent No. 1 during his official tour as Deputy Minister brought undue influence of his official status on the electors of the constituency to vote for respondent No. 1 ?</p> <p>(b) Whether the respondent No. 1 has connived at the said undue influence by Shri Ganeshram Anant ?</p>		<p>No.</p> <p>No.</p>
<p>5. (a) Whether the respondent No. 1 himself and through his agents widely distributed in the constituency pamphlet Exh.-P-2 ?</p> <p>(b) Whether Pamphlet Exh-P-2 purports to be a statement issued by Shri Indraman Prasad Mahto.</p> <p>(c) Whether said Shri Indraman Pd. Mahto is an influential personality in the Janjgir tahsil and particularly in the constituency ?</p> <p>(d) Whether in the pamphlet Exh-P-2 the said Shri Indraman Prasad purported to declare that respondent No. 2 was not a person fit to be supported by the people and that he was undertaking a fast so that good sense should dawn on the respondent No. 2 ?</p> <p>(e) Whether the respondent No. 1 knew that the said Shri Indraman Pd. was one of the staunch supporters of respondent No. 2 in the bye-election ?</p> <p>(f) Whether by publishing and widely distributing pamphlet Exh-P-2 the prospects of the election of respondent No. 2 were prejudiced ?</p>		<p>No.</p> <p>Yes.</p> <p>No.</p> <p>I-part : Yes. II-part : Yes, but not with a view that good sense should dawn on respondent No. 2.</p> <p>No.</p> <p>No.</p>

Issues	Findings
11. (a) Whether there was an improper rejection of the nomination paper of respondent No. 5 ?	No.
(b) Whether he is an elector entered at No. 76 from village Khaiola in Akaltara-Masturi-constituency of M. P. State Legislative Assembly ?	Yes.
(c) Whether he was qualified to contest bye-election from Champa Constituency ?	Yes.
(d) Whether the Returning Officer ought to have accepted the nomination paper of respondent No. 5 and acted illegally in rejecting the same ?	I-part : No. II-Part : No.
12. Whether any of the facts contained in issues Nos. 1 to 11 constitute grounds under Sec. 100 of the Representation of the People Act of 1951 and amount to corrupt and or illegal practices within the meaning of sections 123 to 125 of the Act ?	I-part : No. II-part : No.
13. (a) Whether the election of respondent No. 1 should be declared void ?	No.
(b) Whether respondent No. 2 be declared to be duly elected under section 101 of the Act ?	Does not arise.
14. Relief and costs ?	Petition dismissed as ordered.

REASONS FOR THE FINDINGS

23. Before we commence the consideration of the issues involved in the case, it is necessary to advert to the nature of these proceedings and the quality of the proof required in the case. Regarding the nature of the proceedings we quote the following observations of the Supreme Court in *Jagannath v. Jaswantsingh* (A.I.R. 1954 S.C. 210 at page 212):

"The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that a success of a candidate who has won at an election should not be lightly interfered with and any petition seeking any such interference must strictly conform to the requirements of the law. It is always to be borne in mind that though an election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices."

24. Regarding the nature of the proof required in the case we wish to observe that the inquiry in election cases being a quasicriminal character, a rigid proof is required from a person bringing the charge to prove his case beyond all reasonable doubt; but that does not fully exonerate the person charged with corrupt practices from producing evidence, especially evidence in proof of facts within his special knowledge. In the light of these principles we will now proceed to consider the issues in the case

25. *Issue No. 1.*—For the proof of this issue the petitioner has filed the document Ex. P-9 which is a certified copy of an Extract from the Electoral Roll Champa constituency of the Madhya Pradesh Legislative Assembly as amended in 1953. It shows that the petitioner is entered in the said Electoral Roll at serial No. 580 in village Pondi (Shankar) as an elector. This evidence, which the contesting respondent has not sought to rebut, conclusively proves that the petitioner is an elector entered in the Electoral Roll of the Champa Constituency of the Madhya Pradesh State Legislative Assembly and he is, therefore, entitled to make the petition in question under section 81 of the Representation of the People Act, 1951, and we find accordingly.

26. *Issue No. 8.*—No evidence has been adduced by the petitioner to prove his allegation that the respondent No. 1, hired a motor vehicle No. C.P.L. 339 belonging to Govindram Munshiram of Bilaspur and utilised it for the conveyance of the villagers of Afrid to polling Station Sonthi on 3rd May, 1953. This issue, therefore, remains unproved and the corrupt practice within the meaning of section 123(6) of the Representation of the People Act, 1951, is not proved and we find accordingly.

27. *Issues Nos. 2(a), 3(d), 5(a), 6(a), and 7(a).*—These issues relate to the issue and distribution of the pamphlets Exs. P-1 to P-14 and a pamphlet Ex-P2 in Election Petition No. 11 of 1953 of which Ex. P-8 is a certified copy filed in this case, by respondent No. 1 or by his agents or with his connivance. We will first take up the question whether these pamphlets were got printed by the respondent No. 1 himself or by some other person under his authority or with his knowledge. In this connection the petitioner has examined Shyamnarain (P.W. 21) Manager Shrikrishana Press, Bilaspur, and Chandramohandas (P.W. 23), examined on commission, the Accountant in the Mahakoshal Press, Raipur. Shyamnarain could not say whether the pamphlets Exs. P-1 and P-2, which bear the name of Shrikrishna Press, Bilaspur, were printed at his press, obviously because, as he stated, originals of these pamphlets along with other original papers were destroyed in his press at the previous Diwali according to usual custom. He, however, stated that Order No. 613 dated 17th April, 1953, in his Order Book from 14th April, 1953, to 14th May, 1953 (Ex. P-21), is in the name of Ramkrishna Rathor of Champa (respondent No. 1) for printing 1000 copies, 4th. demi size, on coloured paper and as stated in the order the heading of that pamphlet is "*party dalalon se saodhan.*" But, as he further stated, it is not a custom in his Press to take signature of the person placing the order and the order No. 613 which is a carbon copy of the original written in his hand, does not bear the signature of the person who placed the order. He could not even say who placed this order.

28. He, however, stated that payment of Rs. 18/- relating to Order No. 613 was made on 28th May, 1953, in the name of the respondent No. 1. But he does not remember who exactly made that payment. According to him, even his *Kachi* or *pakki* rokad does not mention the name of the person through whom the said payment was received, as the names of the persons through whom the payments are received for printing are never entered in the account books of his Press.

29. Similarly, according to him, Order No. 595 dated 13th April, 1953, is for printing of election pamphlets 2000, double demi size, in the name of *Tahsil Congress Chunao Morcha* through Bisahu Pallwal, Naila and another order No. 597 dated 13th April, 1953, refers to one pamphlet, 1000 copies, double demi-size in the name of Shri Ramkrishna Rathor through Bisahu Pallwal the nature of the pamphlet entered in the order being "*Congress Jindabad ma mahto ka patra.*" The payment of the first of these two orders, as he says, was made in the name of Shri Lakheshwar Paliwal of Naila and the payment relating to the latter was made in the name of Shri Ramkrishna Rathor of Champa.

30. We do not doubt the veracity of this witness's evidence as there is nothing on record to discredit his testimony. But by his testimony it is not proved that the respondent No. 1 was himself the author of the original of Ex. P-1 or Ex. P-2 or that respondent No. 1 authorised any other person to have a pamphlet Ex-P-1 or Ex. P-2 printed or that he connived at such printing.

31. It is, however, true that one of the headlines in Ex. P-1 is "*parti dalalon se saodhan*" which also appears in the Order No. 613 and Ex. P-2 contains the words "*Tahsil Congress Chunao Morcha*" which appear in Order No. 595. But only from these fragmentary facts it cannot be said that the original documents received for printing under Order No. 613 and Nos. 595 and 597 contained the same contents as Ex. P-1 and Ex. P-2 contain respectively, or that the original of Ex. P-1 contained the signature of the respondent No. 1, or that the original of Ex. P-2 was got printed by some other person under his authority or with his connivance.

32. Shyamnarain has, however, proved that the original documents received in his Press for printing under the Orders mentioned above were destroyed. He had undoubtedly, seen those originals. He has not, however, given the oral account of their contents and no other person has given such account. There is, therefore, no proper secondary evidence on record of the contents of the original documents received by him or in his press for printing under orders in the name of Shri Ramkrishna Rathor or Tahsil Congress Chunao Morcha, or of the hand-writing or signatures existing on those originals. All that his evidence proves is that some matter, the contents of which are not known, was printed according

to orders in the name of respondent No. 1, and Tahsil Congress Chunao Morcha and it does not, therefore, connect either the respondent No. 1, or his agent or some other person with his or his agent's connivance with the printing of Ex. P-1 and P-2.

33. Coming now to the evidence of Chandra Mohandas (P.W. 23), who is an accountant in the Mahakosal Press, Raipur, since March 1953, he has stated that in the printing department of his press there is only one Bill Collection Register which is maintained and in that register only the names of the customers and the amounts received are being entered but the details of the job done are not mentioned in it and they are mentioned in the Bill Book, Order Book and Job tickets. But, according to him, those books for the period from March 1953, to June 1953, are not in existence as they have been destroyed.

34. He, however, stated that from the Bill Collection Register from 15th January, 1953 to 31st December, 1953, it appears that on 14th April, 1953, the Press had given a bill to the District Congress Committee, Raipur on account of job executed by the Press and the amount of that bill was realised on 3rd June, 1953. He has also stated that in the Bill Collection register Bill Nos. 1380 and 1381 are separate bills for District Congress Committee Raipur, for separate jobs and the payment of bill No. 1380 dated 3rd April, 1953, does not appear to have been made while Bill No. 1381 dated 4th April, 1953, had been paid on 7th April, 1953, vide receipt No. 164. This evidence only shows that some printing work was got done by the District Congress Committee, Raipur, in April, 1953, from the Mahakoshal Press, Raipur. But it does not connect that printing work with any of the pamphlets filed by the petitioner in this case.

35. According to this witness, his press does not retain the manuscript or a copy of any pamphlet printed for any customer. He could not therefore, say whether pamphlet Ex. P-2 filed in Election Petition No. 11/1953, which bears the name of the Mahakoshal Press, Raipur as printer and Tahsil Congress Committee, Janjgir as publisher, was printed in the Mahakoshal Press, Raipur. Evidently, he could not say about it in the absence of the original in his press having the same contents as of the pamphlet Ex. P-2. He does not even say that he had seen such original written or printed matter given to his Press for printing copies thereof. His evidence, therefore, does not establish or connect the issue of pamphlet Ex. P. 2 in Election Petition No. 11, or any of the other pamphlets filed by the petitioner, by or at the instance or with the connivance of the respondent No. 1.

36. Section 62 of the Evidence Act defines primary evidence and its Explanation 2 clearly lays down that where a number of documents are all made by one uniform process, as in the case of printing etc. and where they are all copies of common original, they are not primary evidence of the contents of the original and the illustration given thereunder makes this absolutely clear. The pamphlets in question cannot, therefore, be regarded as primary evidence of the contents of the originals of which they are said to be copies. The contents of the originals in question are, therefore, required to be proved by secondary evidence. But, there is no proper secondary evidence on record of the fact alleged by the petitioner that the pamphlets he has filed are the copies of the originals signed or authorised or connived at by the respondent No. 1. In the absence of such evidence, the responsibility for the issue and publication of the pamphlets filed by the petitioner cannot be fastened on the respondent No. 1.

37. This view is supported by the decision of the Election Petitions Commission, U.P. in *Mohamed Ashik Husani Khan vs. Mohamad Ismail and another*, reported in the Indian Election Cases, Vol. II, by Doabia at page 335, where in order to prove an objectionable article purporting to have been signed by a religious head, the newspaper containing it was produced but the original manuscript was not produced on the ground that it was lost and it was held that the article published in the newspaper might be accepted as a secondary evidence of the original manuscript but it can certainly not be regarded as secondary evidence of the fact that the original manuscript was signed by a particular person alleged to have signed it or issued under his authority. A similar view has been taken in many other cases decided by other Election Commissions or Tribunals.

38. Thus, the evidence of the two witnesses belonging to the printing Presses in which the pamphlets in question are alleged to have been printed does not in fact show who was the author of the pamphlets in question or under whose

directions they were printed. Thus the authorship of the pamphlets in question is unknown in this case.

39. In an English case decided by the queen's Bench Division, *Bettesworth Vs. Allingham* (Vol. XVI, Queen's Bench Division, 44), it was proved that the appellant *Bettesworth* was a candidate for a seat in the Local Board of Willesden; that the respondent received from his own servant at his residence a printed address and letter having reference to the election and purporting to be signed by the appellant, but without the printer's name and address thereon; that this document was printed for publication by instructions conveyed to the printer in a letter from the appellant's brother, who resided with him; and that the printer had debited the appellant with the cost of printing, but had not been paid. On this evidence it was held therein that it was not proved that the appellant printed or caused to be printed the document in question.

40. In that English case the author of the document in question was known and yet it was held that the person charged had no connection with the printing of that document. That case was thus much stronger than the present case in which the author of the pamphlets in question is not known.

41. The respondent No. 1, in his evidence as I-R.W. 1, totally denied that he issued or got issued any of the pamphlets in question. *Shri Reshamal Jangde*, M.P., *Shri Vedram*, *Mahant Anjoradas* and *Mahant Naindas* whose evidence as P.Ws. No. 1, 2, and 3 in E.P. No. 11 of 1953 has been admitted in this case, *Mahabir Kurray* (P.W. 20), and *Shri Ganeshram Anant*, Deputy Minister, M.P. (P.W. 25), examined on commission, also deny that they signed the original of the pamphlet Ex. P. 2 in Election Petition No. 11 of 1953 or that they authorised anybody to sign or publish it on their behalf. Similarly, *Maluram* (P.W. 6 in E.P. 11 of 1953), whose evidence has been admitted in this case, denies that he got printed the pamphlet Ex. P. 5 which bears his name. *Ishwari Prasad Chaturvedi* (P.W. 19), has also denied that he got printed pamphlet Ex. P. 3, which bears his name.

42. It cannot, therefore, in our opinion be said from the type of evidence adduced by the petitioner on the question of authorship of the pamphlets in question that they were got printed by or at the instance or with the connivance of the respondent No. 1. It is, however, true that the petitioner had difficulty in the production of the original documents in question because they were in possession or control of either the opponents or third persons. But the burden of proof being on him, it could not be discharged by merely showing that there was difficulty in adducing the necessary legal proof.

43. It was, however, argued by the learned counsel of the petitioner that it was inconceivable that the respondent No. 1, fought the election in question without publishing and distributing some pamphlets for the purpose of canvassing and, therefore, he ought to have produced the copies of the pamphlets which were published and distributed in the Constituency by him or at his instance in order to show that the pamphlets in question were not distributed by him. Even if he had produced those pamphlets the matter would have still remained doubtful, because there was possibility that he might include in those pamphlets some which were not used in the election in question. Such a contention was rejected as incorrect by the Election Tribunal Bihar in *Jadunandan Mahtoon v. Mosahib Singh and others*, reported in Vol. I of Indian Election cases by Doabia at page 46.

44. In any case the evidence adduced by the petitioner does not lead us to anything more than suspicion regarding the issue of pamphlets Ex. P. 1 and Ex. P. 2 by respondent No. 1, and other pamphlets in question with his authority or connivance. It is well settled that suspicion is no proof and, therefore, after giving our earnest consideration to the question of the issue or authorship of the pamphlets in question, we have come to the conclusion that the petition has failed to prove that the pamphlets in question were got printed either by respondent No. 1, or by his agents or by any other person at his or his agent's connivance, and we find accordingly.

45. Coming now to the question of distribution of the pamphlets in question by respondent No. 1, his agents, or by other persons with his connivance, it is very pertinent to note that only one pamphlet of each of the five kinds could be produced before the Tribunal from a constituency of about 50,000 voters. It is also significant to note that the petitioner himself has not entered the witness-box and has not, therefore, disclosed to the Tribunal from whom he secured the five pamphlets in question. He has not even examined any of such persons. None

of the 17 persons examined by him regarding the distribution of the pamphlets in question, produced other copies of the pamphlets.

46. No evidence has also been adduced by the petitioner that the defeated candidate Shri Thakur Chhedilal who keenly contested the election ever tried to refute the allegations made in the pamphlets in question, either by issue of pamphlets or by speeches. The petitioner has not even cared to examine Thakur Chhedilal in order to show that these pamphlets, which are said to have turned the scales against him, had come to his notice. Thakur Chhedilal's evidence on this point would have been the best evidence. But the petitioner has failed to adduce it. It is in this background that the oral evidence of the distribution of the pamphlets in question requires to be considered.

47. There is also divergence between the pleading and the evidence regarding the dates on which and the places at which the pamphlets in question are said to have been distributed. According to the pleading, the following are the dates and places of distribution of the different pamphlets:—

<i>Date</i>	<i>Place</i>	<i>Pamphlets distributed and propaganda made and appeal as stated in para. 9 (c) made in.</i>
23-4-53	Champa Seoni	Exs. P. 2, P. 3 and P. 4. Do.
24-4-53	Atrid Rohda Sonthi Bamnidihi	Do.
27-4-53	Dhirkot Sukli Siund	Do.
28-4-53	Amoda Nawagarh	Do.
29-4-53	Seoni Atrid Sonthi	Exs. P. 1, P. 2, P. 3 & P. 4.
30-4-53	Champa Dhirkot	Do.
2-5-53	Siund Nawagarh & Hardi	Do.

48. But at village Sonthi, according to Jarman (P.W. 1), pamphlets Ex. P. 1 and P. 2 were distributed about a fortnight before the polling. Similarly, Rameshwar (P.W. 2), speaks of distribution of pamphlet Ex. P. 2 in Election Petition No. 11 of 1953 i.e., Ex. P. 8 in this case, about 15 or 20 days before the polling. As regards village Sukli, Gajadhar (P.W. 3), has stated only about the distribution of pamphlets Ex. P. 1 and P. 8 a fortnight before the polling date and to the same effect is the evidence of Khammanlal (P. W. 5) regarding a pamphlet like Ex. P. 1. Regarding village Nawagarh, Jagannathiya (P.W. 4) has stated about the pamphlet regarding Harijans Ex. P. 2 in E.P. No. 11 of 1953, that it was distributed about a fortnight before the polling and about the pamphlet Ex. P. 1 he stated that it was distributed about four or five days before the polling.

49. Regarding village Bamnidihi, it is pertinent to note that the distribution of pamphlet Ex. P. 1 at that village is not mentioned in the pleading and yet Dinanath (P.W. 6), deposed about distribution in his village of the pamphlet Ex. P. 1 about 8 or 10 days before the polling. Jugutram (P.W. 7), of Bamnidihi says about the distribution of the pamphlets Ex. P. 1, Ex. P. 2 and Ex. P. 3 in his village; but he does not give the approximate date when they were distributed.

50. About Dhirkot, according to Baboran (P.W. 8), pamphlet regarding Harijans (Ex. P. 2 in E.P. No. 11 of 1953), was distributed about a fortnight before the polling and two or three days thereafter the pamphlet of the type of Ex. P. 1 was

distributed. About Siund, Manrakhan (P.W. 9), has not stated when they were distributed. Similarly, Ramprasad of Siund (P.W. 10), could not say when the pamphlet relating to Harijans was distributed in his village.

51. For village Seoni, Nanki (P.W. 11), says about the distribution of the pamphlets Ex. P. 1 and Ex. P. 2 of E.P. No. 11 of 1953, but does not say when they were distributed. Regarding village Hardi, Hiralal (P.W. 12), has stated that the pamphlet Ex. P. 2 in E.P. No. 11 of 1953, and Ex. P. 1 in this case were distributed but could not give the approximate dates when they were distributed.

52. In respect of village Bhawarmal, there is no allegation in the pleading regarding distribution of the pamphlets in question and yet the petitioner has examined Ruprai of Bhawarmal (P.W. 13), to show that the pamphlet Ex. P. 1 and another pamphlet relating to Harijans were distributed in his village. He was not, however, able to say as to the approximate date when they were distributed.

53. As regards village Champa, Chhotelal (P.W. 14), could not say about the distribution of any pamphlet. In fact, he stated that he never saw the pamphlet Ex. P. 1. Ramdin of Champa (P.W. 15), says that respondent No. 1, visited his village twice before the Polling, once about a month and then about a fortnight before the polling. He only says about distribution of pamphlets relating to Harijans Ex. P. 2 in E.P. No. 11 of 1953, in his locality, though there are no Harijans in his locality. About Ex. P. 1 he says that he does not know if such pamphlet was distributed. In this connection it is pertinent to note that though village Champa has a population of about 15,000 persons, the petitioner could not prove the distribution in that big centre of the pamphlet Ex. P. 1, which is said to have produced the greatest adverse effect on the defeated candidate.

54. Regarding villages Kusmunda and Pondi, there is no pleading about distribution of pamphlets in question. Yet P.W. 16 Sadhram of Kosmunda stated about the distribution of pamphlets Ex. P. 1, Ex. P. 3 and Ex. P. 4 in this case and Ex. P. 2 in E.P. No. 11 of 1953, but could not give the approximate dates of distribution. Similarly, according to Sonsal (P.W. 17), of village Pondi, Exs. P. 1, P. 2, and P. 4 in this case and Ex. P. 2 in E.P. No. 11 of 1953, were distributed in his village and other villages and though he was a worker for the Praja Socialist Party candidate he says that the pamphlet Ex. P. 1, was distributed at Pondi about three or eleven days before the polling and he could not give the idea as to when the other pamphlets were distributed.

55. Regarding the evidence of distribution of pamphlets in the villages not mentioned in the petitioner's pleadings, his learned counsel contends that the said evidence is admissible under sections 8 and 11 of the Evidence Act. But we do not accept this contention and we cannot overlook the difference between the pleading and evidence. But, besides the divergence between the pleading and evidence, it is pertinent to note that the petitioner has not been able to adduce evidence to show that many of the persons, named in the particulars given by him on 24th February, 1954, as respondent No. 1's agents, who were said to have distributed the pamphlets in question, did in fact distribute them. Such evidence was expected from the petitioner because he named certain persons who made the distribution of the pamphlets. The inability of the petitioner to adduce such evidence indicates that the evidence of distribution of the pamphlets in question adduced by him is not genuine.

56. Jarman (P.W. 1), of Sonthi has been named by the petitioner as the agent of the respondent No. 1, who distributed the pamphlets in question. But he says that he was not a worker for respondent No. 1. The petitioner has not examined one Bisahu, who, according to this witness, distributed some pamphlets relating to Harijans. This witness appears to be interested in the petitioner as his father-in-law, as admitted by him, lives at Pondi of which the petitioner was the ex-malguzar. He is a harmonium master of the Ramilla mandali known as Loknath party and Rameshwar (P.W. 2), is the *tabalchi* of that party. It is interesting to note in this connection that according to Rameshwar (P.W. 2), he never read the pamphlet about the distribution of which he deposed and others showed him that pamphlet from some distance. It is difficult to believe such sort of evidence which reads like a cock-and-bull story.

57. Gajadhar of Sukli (P.W. 3), is a dancer, though not of Ramsarkar Mandali and his interest in the P.S.P. is evident because, as he has admitted, he had seconded the nomination of Ramsarkar who had a hut symbol in the Janapada elections held recently and as further admitted by him, Ramsarkar was present

in court premises on the day when he gave evidence. He does not remember if the hut symbol workers said anything in their speeches regarding the pamphlets distributed at the meetings of Shri Rathor.

58. Jagannathiya of Nawagarh (P.W. 4), who is illiterate, does not remember if the hut symbol party distributed any pamphlets. It is, therefore, difficult to believe him when he says that the pamphlet referring to bullocks as Laxmi and the pamphlet referring to Satnamis were distributed in his village, especially when no other witness of his village corroborates him.

59. Khammanlal (P.W. 5), is also illiterate and according to him, though the contents of the pamphlet distributed in his village Sukli by Shri Rathor and his supporters were explained, he could not follow or understand them. His evidence about distribution thus amounts to nothing.

60. Dinanath (P.W. 6), of Bamnidih is a brother of Dindayal who is a Panch of the Lakhali Nyaya Panchayat of which the petitioner is also a panch. His interest in the petitioner is, therefore, obvious. It is also significant to note that Jugutram (P.W. 7), is in the employment of Dinanath (P.W. 6), and, as admitted by him, before he came to give evidence accompanied by Dinanath, he visited Thakur Chhedilal's House. He has also stated that Dinanath's brother Dindayal sought election in the recent Janapada elections on the hut symbol. He cannot tell the names of the persons who distributed the pamphlets supporting the bullock symbol and he also cannot tell the names of the persons who read out or explained those pamphlets. Thus his evidence, like the evidence of his master Dinanath, is interested and unreliable.

61. So far as village Dhirkot is concerned, there is only one witness viz. Bahoran (P.W. 8). He is a landless labourer and his ancestral land was sold to pay debts including gambling debts. Thus he is a man of shady character. According to him, one or two pamphlets were handed over to one or two persons at the meeting attended by 60 or 70 persons and he cannot say to whom they were handed over. It is difficult to believe such sort of vague and unreliable evidence.

62. Regarding village Sieund, the petitioner has examined two witnesses, Manrakhan (P.W. 9), and Ramprasad (P.W. 10). Thakur Maliksingh, brother-in-law of Thakur Chhedilal, is the ex-malguzar of village Sieund and he was present in the court verandah when these two witnesses were examined as admitted by Manrakhan. Besides, Manrakhan has seconded the nomination of one Lakhandas who recently contested the recent Janapada elections on the hut symbol. His interest in the P.S.P. is, therefore, evident. It is also significant to note that Ramprasad (P.W. 10), cannot say definitely which particular pamphlet was distributed and except for the appeal to vote for the bullock symbol, he cannot tell what was written in those pamphlets. The evidence of such witnesses is self-condemnatory and cannot be believed even for a moment.

63. There is only one witness Nanki (P.W. 11), of village Seoni who has spoken about distribution of pamphlet Ex. P. 1 in this case and Ex. P. 2 in Election Petition No. 11 of 1953. Before showing the pamphlets in question to him, he stated that the pamphlets distributed on behalf of the respondent No. 1, used to contain an appeal to vote for the bullock symbol as that would be beneficial to agriculturists, but he did not remember what else those pamphlets contained. According to him, after the distribution of the pamphlets in question villagers did not come and tell him that they intended to vote for any particular candidate. He could not, therefore, maintain, as he has deposed, that after the distribution of the pamphlets the majority of the residents of his village decided to vote for the Congress. His evidence is thus clearly got-up.

64. Hiralal (P.W. 12), of Hardi is the solitary witness about the distribution of the pamphlets in his village. He said that whenever pamphlets were distributed the leaders of the village used to ascertain the intentions of the villagers and it has happened in his village at every election; and whenever there was any question of voting, it was always decided unanimously in his village. It is difficult to imagine such sort of unanimity in the election matter and his story is thus very unusual. The uncorroborated testimony of such a witness does not, therefore, carry conviction.

65. There is only one illiterate witness of village Bhawarmal, viz., Ruorai (P.W. 13), who speaks of distribution of pamphlet Ex. P. 1 in his village. Only on seeing the pamphlet Ex. P. 1 this witness stated that it was the same

pamphlet which was distributed by the supporters of the respondent No. 1 and which was read over and explained to the villagers when it was distributed. It is difficult to imagine how he, being illiterate, could say it, simply on seeing the pamphlet Ex. P. 1 unless he had come prepared to say it. His uncorroborated testimony is not, therefore, worthy of belief.

66. Chhotelal (P.W. 14), of village Champa, a big polling centre, disclaimed any knowledge of the distribution of any of the pamphlets in question in Champa. There is nothing on record to show that he has been won over by the other side. He is an independent witness and his evidence thus goes against the petitioner. Similarly, Ramdin (P.W. 15), of Champa stated that he did not know if pamphlets like Ex. P. 1 were distributed at Champa. He only stated about the distribution of pamphlets like Ex. P. 2 in Election petition No. 11 of 1953. He is evidently an interested witness as he admittedly worked in the election in question on behalf of Thakur Chhedilal and none from his locality gave any help to the respondent No. 1. His evidence regarding distribution of pamphlet like Ex. P. 2 in Election Petition No. 11 of 53 is thus interested and does not carry conviction.

67. There is the solitary evidence of Sadhram (P.W. 16), regarding distribution of some of the pamphlets in question at village Kusmunda and similar is the case with regard to village Pondi to which Sonsai (P.W. 17), belongs. These two villages, as has been already stated, are not in the particulars stated in List A appended with the petition. Sadhram (P.W. 16), as admitted by him, worked in the General elections to the Assembly for Thakur Indrajit Singh who belongs to the same party as Thakur Chhedilal, and Sonsai (P.W. 17), was admittedly a worker of the defeated candidate. The evidence of these two witnesses is thus interested. If it were true that any of the pamphlets in question had produced adverse effect as Sonsai (P.W. 17), says that they did, he would have surely informed about it to Thakur Chhedilal. But it does not appear from his evidence that he did so. Instead, he says that he had told only to the petitioner about the pamphlets which were distributed at other villages except at Pondi; but the petitioner has not come forward to corroborate this version. The evidence of these two witnesses is, therefore, interested and unreliable.

68. Besides, Gajadhar (P.W. 3), and Manrakhan (P.W. 9), have stated the presence of Shri Reshamlal Jangde M.P. at the distribution of the pamphlets Ex. P. 2 in Election Petition No. 11 of 53. But Shri Reshamlal Jangde (1 respondent No. 2, in Election Petition No. 11 of 53), has stated that he did not go for canvassing in the Champa constituency at the time of the bye-election in question and at that time he was at Delhi for the parliamentary session from before 1st March, 1953, up to about 7th May, 1953. We do not doubt the veracity of this evidence of Shri Reshamlal Jangde who holds a responsible position as M.P. and, therefore, we find that Gajadhar (P.W. 3), and Manrakhan (P.W. 9), have deliberately given false evidence regarding Shri Reshamlal's presence at their villages during the canvassing for the bye-election in question.

69. This type of evidence adduced by the petitioner does not convince our mind regarding the alleged distribution of the pamphlets in question, either by respondent No. 1, or by his agents or by other persons with his connivance. Such evidence could be easily fabricated and from many circumstances which we have already mentioned, we think we are justified in inferring that this is cooked up evidence, simply for the purpose of supporting the petition in question. This kind of sham evidence does not need any evidence by way of rebuttal on the part of the respondent No. 1. But if it is necessary, by the evidence of respondent No. 1, himself as respondent No. 1, Bhagwangir (respondent No. 2), and of some of the witnesses examined by the petitioner himself, to which we have already referred the evidence adduced by the petitioner on the point in question has been successfully rebutted. We, therefore, find that the petitioner has failed to prove the distribution of the pamphlets in question in the Constituency either by respondent No. 1, or by his agent or by other persons at his connivance.

70. Issues Nos. 2(b), (c) and (d)—These issues do not arise for decision in view of our finding on the question of issue and distribution of the pamphlets in question. But we are discussing these questions on the assumption that the pamphlet Exh P 1 to which these issues relate was issued and distributed by or under the authority or with connivance of respondent No. 1.

71. The question, in substance in this connection is as to what is the meaning of the word 'Laxmi' used in the pamphlet Ex. P. 1 and whether thereby the respondent No. 1 induced or attempted to induce electors to believe that they or any persons in whom they are interested will become or will be rendered objects

of divine displeasure or spiritual censure within the meaning of section 123(2) (ii) of the Representation of People Act, 1951, or whether thereby general undue influence was exerted on the electors within the meaning of section 123(2) of the Representation of People Act, 1951. In this connection, it is pertinent to note that some of the witnesses examined by the petitioner himself, such as, Khamman-lal (P.W. 5), Jugutram (P.W. 7), Bahoran (P.W. 8), Nanki (P.W. 11), and Sarsai (P.W. 17), have stated that in Chhattisgarh the bullocks are termed and called as 'Laxmi'. Thus to this extent they have supported the contention of the respondent No. 1. Therefore, it is necessary to see whether by substituting the word 'bullocks' in place of the word 'laxmi' in the pamphlet Exh. P. 1, it makes a sensible reading and if it does, it cannot be said that the word 'Laxmi' is used in it in divine sense only.

72. This pamphlet after its headings and a couplet continues with the word "ehich" (this) and just opposite to this word there is a symbol of a pair of yoked bullocks. This is indicative of the fact that the word 'Laxmi' used next to the word 'ehich' refers to the pair of yoked bullocks. The sentence then reads "*ehich laxmi har hamar yuva la sagar din le bahu se*" (This laxmi has been bearing for all times our yoke). By substituting the word 'bullocks' in place of 'Laxmi' in this sentence it makes a perfectly reasonable meaning, while on the contrary, if 'laxmi' in this sentence is used in the divine sense it makes an absurd meaning, as no Hindu would say that Laxmi in the divine sense, i.e., Goddess Laxmi has been bearing a yoke. Then the next sentence is "*Aoo, ehich har ham la ghat utar hi*" (and this alone will enable us to cross the river). If this sentence is interpreted with reference to bullocks, it makes quite a good meaning that they will enable the agriculturists to do their work successfully.

73. The pamphlet then continues to say "*eti teti me bulaye ke layak niye; ela chhode ke layak niye; dhokha holu*" (This is a thing not worthy to be left; it is not worthwhile to go elsewhere; otherwise there will be deception or blunder). Here also if the sentence is interpreted by reference to bullocks, it makes a quite practical and natural meaning.

74. In the next three sentences in the pamphlet there is admittedly nothing objectionable and they refer to the promises given by the parties and exhortation to the electors to rely on their own labour. Then the alleged objectionable words are "*Laxmi La jhan chhodu ha; nito, laxmi har tuhu la chhod didhi tau fadihat ho jahi*" (Do not forsake Laxmi, otherwise, laxmi will forsake you and then you will suffer harassment or misfortune). The use of the words bullocks in place of the word 'Laxmi' in these sentences also makes a proper meaning for the electors most of whom are agriculturists. Even if the word 'Laxmi' in these sentences is interpreted in the sense of Goddess Laxmi, there is nothing in it to indicate the threat of divine displeasure or spiritual censure because the words "*fadihat ho jahi*" only mean material loss and they do not mean spiritual calamity.

75. The pamphlet then contains a couplet seeking the benediction of gods and goddesses. But there is nothing in this pamphlet to show that by voting for the bullock symbol, the electors would get the blessings of gods and goddesses. There is obviously no meaning of divine displeasure or spiritual censure in this couplet. The last sentences which are objected to are "*etiteti la chhod do, abga laxmi chap peti me bhot do*" (Leave all else and now please give vote only in the laxmi box.) If the word bullocks is used in place of 'Laxmi' in these sentences, they make a sensible meaning.

76. Another meaning of the word 'laxmi' is wealth. If, therefore, the word 'laxmi' used in pamphlet Exh. P. 1 is interpreted to mean as wealth, the pamphlet makes an understandable and reasonable meaning and the whole pamphlet then becomes an appeal to the agriculturists in the name of bullocks symbol, the voting for which would add to their wealth and prosperity in the material sense and the non-voting for the symbol would bring poverty.

77. Thus, in any case, it cannot be said that the use of the word 'laxmi' in this pamphlet is made only in the sense of Goddess Laxmi. Even if it is assumed that it is used in that sense, there is nothing in our view in this pamphlet to indicate divine displeasure or spiritual censure and some of the witnesses examined by the petitioner did not understand it in that sense.

78. It is, however, true that the majority of the voters in the constituency, as stated by many of the witnesses examined by the petitioner, are illiterate, backward and religious-minded and believe in Gods and Goddesses. But as the pamphlet in question does not in our view contain a threat of spiritual censure or

divine displeasure, it cannot be said that it had or was likely to produce any undue influence or spiritual undue influence on them.

79. Thus, the petitioner has failed to prove the major corrupt practice of undue influence or of spiritual undue influence by the respondent No. 1 or any of his agents or any other person with his connivance by issue and distribution of pamphlet Exh. P. 1 as alleged by him within the meaning of section 123(2) or section 123(2) (ii) of the Representation of the People Act, 1951. Our findings on issue Nos. 2(b) and (c) are, therefore, in the negative and on issue No. 2(d) in the affirmative.

80. *Issue No. 3(a), (b) and (c).*—These issues relate to the pamphlet Ex. P. 2 in Election Petition No. 11 of 1953, which is Ex. P. 8 in this case. We have already held that no such pamphlet was issued by the persons who purport to be its signatories and it was not distributed. In this view these issues do not arise for decision. But assuming that such a pamphlet was issued and distributed by or under the authority or with the connivance of respondent No. 1, it is necessary to consider whether it amounts to a systematic appeal to vote and refrain from voting on the ground of caste, race, or community for the furtherance of the prospects of the respondent No. 1's election within the meaning of section 124(5) of the Representation of the People Act, 1951.

81. In this connection it is pertinent to note that the pamphlet in question relates to Harijans only and none of the contesting candidates is a Harijan. Therefore, the appeal in question cannot amount to an appeal to vote on the ground of caste or community or race. We think that the systematic appeal in section 124(5) *ibid* refers to the caste, community, race or religion of a candidate only and not of the electors. In our view, any caste, race or community can unite and decide to vote for a person belonging to different community, caste or race. But they cannot do so on the ground that the candidate belongs to their caste, race or community. There was, therefore, nothing objectionable in an appeal made to the Harijans to prefer one of the two candidates in the bye-election in question who do not belong to their caste, community or race.

82. It is, however, said that the said pamphlet contained false assertions that it was the Congress Party which had given to the Harijans the right of becoming members to various Legislatures and that the amenities or the rights provided by the Government for the Harijan community were given by the Congress. In this connection, the petitioner has examined 5 witnesses, *viz.*, Mahabir Kurray (P.W. 20), Shri Ganeshram Ananta (P.W. 25), Shri Vedram, Mahant Anjoradas and Mahant Naindas M.L.As, whose evidence in Election Petition No. 11, of 53 has been admitted in this case, and respondent No. 1, has examined Shri Reshamlal Jangde in Election Petition No. 11 of 1953 and his evidence has been admitted in this case. All of them are Harijans. According to Mahabir Kurray (P.W. 20), all the statements in the pamphlet in question are correct excepting the statement about freeship to Harijan students which is partly correct. Shri Reshamlal Jangde (Respondent No. 2, in Election Petition No. 11, of 1953) also says that Congress has done Harijan uplift work and some Harijans have become ministers in Government, because they were the members of the Congress Party and with the help of the Congress, the Harijans have been able to secure Government service including the service as teachers. He has further added that so far as pamphlet Exh. P. 2, in Election Petition No. 11 of 1953, refers to the uplift of the Harijans and facilities given to them by the Congress, he admits their correctness and he says he has himself expressed such views on occasions other than the bye-election in question.

83. According to Shri Vedram (P.W. 1 in Election Petition No. 11/1953), Congress has been doing Harijan uplift work as a matter of declared policy and because the present Government is the Congress Government, it has given facilities and amenities to the Harijans in the matters of service, education, and representation in Legislatures and the Government. Mahant Anjoradas (P.W. 2 in Election Petition No. 11 of 1953), has also admitted that the facts as stated in the pamphlet in question are correct. Mahant Naindas (P.W. 3 in Election Petition No. 11 of 1953) has, however, said nothing on this point.

84. Now remains the evidence of Shri Ganeshram Anant (P.W. 25), Deputy Minister, M.P., to be considered on this point. According to him, Congress through its present Government has given certain facilities to the Harijans, *e.g.*, freeships to Harijan students and employment in Government services. But in his opinion it is not correct that Congress has given to the Harijans the right of becoming Ministers and members in the Legislatures, though it is a fact that the Congress

is helping the Harijans in every respect and the Congress Government exempted the Harijan students from payment of fees. He has also added that the Congress organisation through its parliamentary party and through its Government can get these facilities enforced and since the advent of the Congress organisation uplift of Harijans was one of the items of the Congress policy and the Congress Government acted according to the policy of the Congress organisation in respect of the Harijans.

85. Thus, on the whole almost all the witnesses examined on the point have stated that the statements made in Exh. P. 2 in Election Petition No. 11 of 1953 are substantially correct. In any case the statements in this pamphlet relate to legitimate political propaganda and matters of public interest and general concern and may of the statements therein are matters of opinion and it does not contain anything in relation to the personal character or conduct of any candidate. It does not, therefore, in our opinion, amount to a corrupt practice of undue influence or of publication of false statements within the meaning of section 123(2) or section 123(5) of the Representation of the People Act, 1951. We, therefore, find on issue No. 3(a) and (b) that the appeal in the pamphlet in question does not fall under section 124(5) or section 123(2) or section 123(5) *ibid*, though we find on issue No. 3(c) that it contains an appeal to the Harijans as a community not to vote for respondent No. 2. The question whether the publication of this pamphlet has materially affected the result of the election does not arise in view of our finding that minor corrupt practice within the meaning of section 124(5) *ibid* is not proved.

86. *Issues Nos. 5(b) to (h).*—These issues relate to the pamphlet Exh. P. 2. These issues do not in fact arise for decision in view of our finding on issue No. 5(a) regarding the issue and distribution of this pamphlet. But we are considering these issues on the assumption that the respondent No. 1 himself and through his agents distributed the pamphlet Exh. P. 2 in the constituency.

87. This pamphlet purports to have been signed by Indramanprasad Mahato, his designation on the pamphlet being Dharma Visharad, Akaltara. But the petitioner has not examined him and there is no evidence on record to show that he is an influential personality in the Janjgir Tahsil and particularly in the constituency in question. All that we know about him from Sonsai (P.W. 17) is that he is now a teacher in the Janjgir Janapada and he was siding the hut symbol at the time of the election in question and in the villages the witness visited Indramanprasad was found to have some influence. But from the solitary testimony of Sonsai (P.W. 17), it cannot be inferred that Indramanprasad Mahato is an influential personality in the Janjgir tahsil and particularly in the constituency in question and we find accordingly.

88. This pamphlet, however, purports to declare that Thakur Chhedilal respondent No. 2, was not a person fit to be supported by the electors and that it contains a statement that Indramanprasad was undertaking a fast. But there is nothing on record to show that the respondent No. 1, himself knew that Shri Indramanprasad was a supporter or staunch supporter of the respondent No. 2, in the bye-election in question.

89. The petitioner has not at all attempted to show that the statements in this pamphlet Exh. P. 2 are false. Indramanprasad, who could say about it, is not examined. Thakur Chhedilal, who is respondent No. 2, and about whom the allegations in the pamphlet are made, is also not examined by the petitioner. His would have been the best evidence on the point and for reasons best known to the petitioner, he has failed to examine him on the point. It cannot, therefore, be said that the statements contained in Exh. P. 2 are false.

90. It is, however, argued by the learned counsel of the petitioner that there is no specific denial by the respondent No. 1, in his pleading that the statements in Exh. P. 2 are false and, therefore, he should be deemed to have admitted the said fact. It is pertinent to note in this connection that the respondent No. 1, has totally denied in his written statement the allegations in this connection in the same form in which they were made. In fact, the petitioner did not make a categorical statement that statements in Exh. P. 2 were false. All that he stated in his petition in this connection in para. 9(d) was that respondent No. 1, knew or believed the said statements to be false. Thus the petitioner having been himself silent on the point, it is not open to him to say that the respondent No. 1, should have made a specific denial on the point. In these circumstances the two decisions relied on by the learned counsel of the petitioner, *Rishabhkumar v. Singhai Motilal* (I.L.R. 1948 Nag 299 at pages 302-303) and *Govindram v. Gulabrao*

(I.L.R. 1949 Nag. 478 at pp. 481-483) do not, in our opinion, apply to the facts of this case.

91. There is also nothing on record to show that the statements in pamphlet Ex. P. 2 were known or believed to be false by respondent No. 1. In this connection the learned counsel of the petitioner relies on the following statement made by respondent No. 1, in his evidence as 1-R.W. 1:—

“I would not have assented to the printing and distribution of any of the pamphlets in question including Exh. P. 2 as they contain some objectionable matter and some matter of which I have no knowledge.”

This statement, in our opinion, does not mean that the statements in the pamphlet Exh. P. 2 were known or believed to be false by respondent No. 1.

92. Thus the petitioner has failed to prove that the statements in pamphlet Ex. P. 2 were false or that they were known or believed to be false by respondent No. 1. There is also no evidence to show that Indramanprasad has a large following among the electors in the constituency in question or that any of such followers were induced by pamphlet Exh. P. 2 not to cast their votes for respondent No. 2. In view of these facts it is, in our opinion, not proved that the statements in Exh. P. 2 were reasonably calculated to prejudice the election of the respondent No. 2, or that by the publication of the said pamphlet the prospects of the election of the respondent No. 2, were prejudiced and we find accordingly.

93. The publication of the pamphlet Exh. P. 2 does not, therefore, amount to undue influence within the meaning of section 123(2), of the Representation of the People Act, 1951. In any case, in our opinion, the statements contained therein are not in relation to the personal character or conduct of Thakur Chhedilal, the defeated candidate, but they are statements with regard to his public and political career. Besides, as we have already said, it is not proved that it contains statements of facts which are false and that the respondent No. 1 either believed them to be false or did not believe them to be true and these statements were not reasonably calculated to prejudice the prospects of the election of Thakur Chhedilal. The publication of the said pamphlet does not, therefore, constitute corrupt practice within the meaning of section 123(5) of the Representation of the People Act, 1951 and we find accordingly.

94. *Issues Nos. 6(b), (c) and (d).*—These issues relate to pamphlet Exh. P. 3. It bears the name of Ishwariprasad Chaturvedi, Akaltara as its author. He has been examined as P.W. 19 but he denies that he got the pamphlet Exh. P. 3 printed or published, though he admits that he got published other pamphlets in the by-election in question for which respondent No. 1, paid the expenses. The respondent No. 1, has also denied the issue or distribution of this pamphlet. From the evidence of these two witnesses, it cannot be said that the statements in this pamphlet were either false or that respondent No. 1, knew or believed them to be false.

95. Besides, the petitioner has not made any attempt to show that the statements in Ex. P. 3 are in fact false. For reasons best known to him he has not examined the defeated candidate Thakur Chhedilal to whom they relate. Thakur Chhedilal's would have been the best evidence on the point; but the petitioner thought fit not to adduce such evidence. It is not, therefore, proved by the petitioner that the statements in Ex. P. 3 are false or the respondent No. 1, knew or believed them to be false and we find accordingly.

96. In connection with this pamphlet also it is argued by the learned counsel of the petitioner as he did in connection with pamphlet Ex. P. 2 that there is no specific denial by respondent No. 1 in his pleading that the statements in Ex. P. 3 are false and, therefore, he should be deemed to have admitted the said facts. We reject this contention as unsound for the reasons which we have already adduced in para. 90 above.

97. In any case on examination of the statements contained in Ex. P. 3 we find that they relate to the political and public character of Thakur Chhedilal and not to his personal character or conduct. The allegory of 'Bhassuasura' used in this pamphlet in relation to Thakur Chhedilal is not with regard to his private character or conduct but it is about his political vagaries. For this reason and for other reasons which we have stated above we find that the publication of this pamphlet does not amount to corrupt practice within the meaning of section 123(5) of the Representation of the People Act, 1951. It does not also, in our

opinion, amount to undue influence within the meaning of section 123(2) *ibid* as it contains statements which can be legitimately made in electioneering campaign concerning the public career of the candidate.

98. It is true that the name of the printer is not printed in the pamphlet, Ex. P.3. It, however, mentions the name of the author thereof and, therefore, the author can be deemed to be its publisher. In any case, the responsibility of the omission of the name and address of the printer in this pamphlet cannot be saddled on the respondent No. 1 as he or anybody on his behalf is not proved to have printed or published it. Besides, the illegal practice in this connection, as stated in section 125(3) of the R. P. Act, requires the omission of the name and address of the printer and publisher thereof. In this connection, it is pertinent to note the word "and". This word "And" generally means "and" and not "or". We do not think that there is any sufficient reason to read this word "and" as "or". As laid down in *L. H. Sugar Factory v. Moti* (A.I.R. 1941 All (243)) it is the duty of a Court of law to primarily adhere to the strict literal interpretation of the words used, and the substitution of conjunctions should not be made without sufficient reason. The words "printer and publisher" used in section 125(3) *ibid* are not, in our opinion, capable of two interpretations. We, therefore, find that the word "and" in this sub-section is used in the sense of "and" and not "or". In this view the absence of the name and address of the printer alone and not of publisher of Ex. P.3 does not amount to illegal practice within the meaning of section 125(3) *ibid*.

99. *Issues Nos. 7(b), (c) and (d).*—These issues relate to pamphlet Ex. P.4 which bears the name of one Maluram Kedia of Akaltara as its author. Maluram of Akaltara (p.w. 6 in E. P. No. 11 of 1953) has been examined in E. P. No. 11 of 1953 and his evidence has been admitted in this case. But, as already stated, he has denied that this pamphlet, which is Ex. P.5 in E. P. No. 11 of 1953, was got printed or distributed by him. Respondent No. 1 in his evidence as R. W. 1 has also stated that he did not get this pamphlet printed or distributed and that he never came to know that any such pamphlet had been distributed during the bye-election in question. The contention of the learned counsel of the petitioner that in view of the absence of specific denial on the part of respondent No. 1 that the statements contained in this pamphlet were false, he should be deemed to have admitted that fact, cannot be accepted for the reasons already given by us in para. 90 *supra*.

100. No evidence has been adduced by the petitioner to show that the statements contained in this pamphlet are in fact false. The best evidence on this point would have been of Thakur Chhedilal to whom these statements relate. But for reasons best known to the petitioner, he has with-held that best evidence from the Tribunal.

101. On the contrary, Maluram Kedia, who is the petitioner's witness, has stated in his evidence that the facts mentioned in this pamphlet are true and he had declared them to be so from the platform. He has also narrated the facts on the basis of which he says that—the statements are true. It cannot, therefore, be said that the statements of facts contained in the pamphlet Ex. P.4 are false or that the respondent No. 1 knew or believed them to be false.

102. No evidence has been adduced by the petitioner to indicate that by the declaration of a fast which Maluram of Akaltara had admittedly started on 1st May, 1953 and ended on 7th May, 1953, any of the electors were in fact induced not to vote for the respondent No. 2, Thakur Chhedilal. In the pamphlet Ex. P.4 there is only a statement regarding declaration of a fast by Maluram Kedia and such a declaration, in our opinion, does not amount to threatening the electors with an injury. This declaration of fast or the other statements contained in Ex. P.4, which are not proved to be false, were not, therefore, in our opinion, calculated to induce the electors of the constituency not to vote for the respondent No. 2, and they did not amount to undue influence within the meaning of section 123(2) of the Representation of the People Act, 1951.

103. The statements in Ex. P.4 do not also, in our opinion, relate to the personal character or conduct of Thakur Chhedilal and they in fact relate to his public conduct in relation to public affairs. The publication of the statements in Ex. P.4 does not consequently amount to corrupt practice within the meaning of section 123(5) *ibid* and we find accordingly.

104. It is, however, true that the pamphlet Ex. P.4 does not bear on its face the name of the printer thereof. In this connection the reasons which we have already given in para. 98 above apply with respect to the pamphlet Exh. P.4 also

and, therefore, we find that only by the reason of the absence of the name of the printer and not of publisher of Exh. P.4, illegal practice within the meaning of section 125(3) *ibid* is not established.

105. *Issues Nos. 4(a), (b), 10(a), (b), (c) and (d).*—These issues relate to the part taken by Shri Ganeshram Anant, Deputy Minister, and Shri Brijlal Biyani, Finance Minister M.P. in canvassing for the respondent No. 1, in the bye-election in question. We have already found that Shri Ganeshram Anant did not issue an appeal as contained in the pamphlet Exh. P.2, in Election Petition No. 11 of 1953 (Ex. P-8 in this case). But Shri Ganeshram Anant (p.w. 25 on commission) has admitted in his evidence that he had been to the Champa constituency in the bye-election in question for canvassing on behalf of the Congress candidate and had toured the constituency extensively for canvassing and had visited Champa, Bamnidih and other places and at some places he had been with Shri Brijlal Biyani for canvassing during the bye-election in question.

106. Regarding what Shri Ganeshram Anant spoke while canvassing for the respondent No. 1, he states that what he said was that the Congress has done much for the benefit of the people and therefore they should vote for the congress candidate. He also admitted that he was present in the political conference at Naila on or about 25th or 26th April 1953 and he and Shri Brijlal Biyani both had addressed it and solicited votes for the Congress candidate in the constituency.

107. Regarding Shri Brijlal Biyani he stated that he only referred to Five-year plan and explained how it was being worked out by the Government and further said that in democracy rulers were produced by ballot boxes and that they were not hereditary as they used to be previously in the days of Kings.

108. Similarly, Shri Brijlal Biyani (p.w. 24 on commission) has admitted that he had gone to the Champa constituency to canvass on behalf of the Congress candidate and had addressed a political conference at Naila on or about 25th April 1953 and public meetings at other places on or about 26th or 27th April 1953 and exhorted the voters to vote for the Congress candidate. As to what he spoke he stated that he said that in democratic elections Kings were born from ballot boxes and in general elections the ballot boxes have given birth to Congress Kings and the voters had to consider in election in question in what box they should vote. He has further stated that by using the word 'Raja' he meant administrator or ruler. He denied that he said that if the electors voted for non-congress candidate Respondent No. 2, the progress of the Five-Year Plan was bound to be hindered and the ballot box of respondent No. 1, was in fact the box of the Government.

109. He, however stated, contrary to the evidence of Shri Ganeshram Anant, that he did not refer to anything about the Five-Year Plan in the meetings because it was not the general practice of his election lectures to enter into the present politics or to refer to Government work. But this discrepancy is immaterial and it may be due to wrong impression of Shri Anant or due to lapse of memory of Shri Biyani. Lastly, he stated in his evidence that he went in the Champa constituency to canvass for the respondent No. 1, in the capacity of a Congressman and canvassed there as a Congressman. We do not see any reason to disbelieve the evidence of these two witnesses and each of them has substantially corroborated the other and the petitioner has failed to rebut their evidence. We, therefore, find that Shri Brijlal Biyani exhorted the voters to vote for respondent No. 1, but he did not say that in case they voted for the non-Congress candidate the progress of the Five Years Plan was bound to be hindered and the ballot box of respondent No. 1, was in fact the box of the Government or that he induced the electors to believe that they cannot get the benefit of the Five Years Plan of the Government unless they voted for the respondent No. 1.

110. Shri Brijlal Biyani Finance Minister, M.P., and Shri Ganeshram Anant, Deputy Minister, M.P. canvassed for the Congress candidate respondent No. 1, in the bye-election in question, evidently because they belong to the Congress Party. In their capacity as members of the Congress Party it is their legitimate right to canvass for a candidate of their party and they did not, in our opinion, lose that right when they were appointed Ministers. In democratic countries, where the Government is formed on Party basis, such a right is freely exercised by the Ministers for supporting a candidate of their political party. There is, therefore, no reason why that right should be denied to the Ministers in India. In our opinion, the manner of canvassing by Shri Brijlal Biyani and Shri Ganeshram Anant for respondent No. 1, a member of their political party, amounts to legitimate

political propaganda for the furtherance of the interests of their political party. We do not, therefore, think that by what they stated while exhorting the electors to vote for the respondent No. 1, they exercised undue influence on the electors within the meaning of section 123(2) of the Representation of the People Act, 1951. The presence of the respondent No. 1, at some of the meetings addressed by Shri Brijlal Biyani and Shri Ganeshram Anant, which they have admitted, does not consequently amount to the connivance of respondent No. 1, as alleged by the petitioner.

111. It is, however, contended on behalf of the petitioner that it was during the official tour as Deputy Minister that Shri Ganeshram Anant made canvassing for respondent No. 1, and, therefore, he brought to bear undue influence of his official status on the electors of the constituency to vote for the respondent No. 1. But Shri Ganeshram Anant has stated that after finishing his Mass Contact tour of Bilaspur which was purely administrative, he started the election campaign. He, however, stated that his tour programme of the election was intimated to the Deputy Commissioner, Bilaspur, who did not attend on him throughout the tour and no Government officer attended during the course of his election tour even for security measures and that it was not his official tour and he spent from his own pocket for his expenses at the election tour programme. Simply because he gave intimation of his election tour programme to the Deputy Commissioner, it cannot be considered to be an official tour. That intimation was probably for the purpose of security measures. There is no reason to disbelieve him in this connection, especially because the petitioner has not been able to adduce any contrary evidence. It is, therefore, clear from his evidence that his election tour was not an official tour and he did not bring to bear undue influence of his official status on the electors of the constituency to vote for the respondent No. 1, and we find accordingly.

112. So far as Shri Brijlal Biyani is concerned, he says that he did not ask the Government officials to accompany him during the course of his election tour; but they might have made arrangements by way of security measures. There is nothing in his evidence to indicate that his election tour in the Champa constituency was his official tour. It cannot, therefore, be said that he exerted undue influence of his official status on the electors of the constituency when he exhorted them to vote for the respondent No. 1, in the bye-election in question and we find accordingly. No undue influence was, therefore, practised by him or by Shri Ganeshram Anant on the electors during the election in question within the meaning of section 123(2) of the Representation of the People Act, 1951 and the question of connivance of respondent No. 1, at such undue influence does not arise.

113. It is, however, strenuously argued by the learned counsel of the petitioner that the canvassing made by Shri Brijlal Biyani, Finance Minister, M.P. and Shri Ganeshram Anant, Deputy Minister, M.P., for the respondent No. 1, amounts to corrupt practice within the meaning of sub-section (8) of section 123 of the Representation of the People Act. But this contention based on section 123 *ibid* was not, in our opinion, pleaded in the petition and this provision of law was not in contemplation of the framer of the petition when it was framed, because the facts necessary to constitute this corrupt practice have not been pleaded in the petition.

114. For the proof of corrupt practice contemplated by sub-section (8) of section 123 of the Representation of the People Act, 1951, the following facts must be proved:

- (i) There must be obtaining or procuring or abetting or attempting to obtain or procure any assistance for the furtherance of the prospects of the candidate for the election;
- (ii) such obtaining etc. of assistance should be either by a candidate or by his agent or by any other person with the connivance of the candidate or his agent; and
- (iii) such assistance must be obtained or procured etc. from any person serving under the Government of India or the State Government of any State.

115. These facts have not been pleaded by the petitioner in his petition. It is not, therefore, now open for the petitioner to contend that the canvassing by Shri Brijlal Biyani and Shri Ganeshram Anant for the Congress candidate, the respondent No. 1, amounts to corrupt practice within the meaning of section 123(8)

of the Representation of the People Act and this question does not, therefore, arise for decision.

116. But, assuming that this question does arise for decision, it is first necessary to see whether the assistance of Shri Brijlal Biyani and Shri Anant was obtained by the respondent No. 1, or by his agent or by any other person with the connivance of the respondent No. 1, or his agent. There is no such evidence on record. On the contrary, the assistance given by Shri Brijlal Biyani and Shri Anant in the election in question was purely by way of volunteering, without any request to them by any person to give such assistance. They were mere volunteers and spontaneous assistance could be legitimately given by them for the furtherance of the prospects of election of a candidate of their own political party and it was in conformity with the constitutional practice prevailing in all democratic countries as we have already observed.

117. The question, therefore, whether Shri Biyani and Shri Anant are persons serving under the State Government of Madhya Pradesh does not arise for decision. But as this point has been argued we wish to discuss it briefly, and record our opinion on it. We think that it is undisputable that they serve the State. We have, therefore, to see whether they serve under the State Government of Madhya Pradesh. In this connection it is necessary to refer to some provisions of the Constitution of India. According to Article 164(1) of the Constitution of India, the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the Governor. Thus, the appointment and dismissal of the Ministers is made by the Governor.

118. On their appointment they hold office of profit under the Government of the State according to Article 191(1)(a) and incur a disqualification for membership of the Legislative Assembly. But this disqualification is excluded by Article 191(2) wherein it is laid down that for the purposes of Article 191 a person shall not be deemed to hold an office of profit under the Government of India or under the Government of any State by reason that he is a Minister for the Union or such State. Apart from exclusion provided by Article 191(2) of the Constitution, if they hold office of profit under the Government of the State, there is no reason why they cannot be considered to be persons serving under the Government of the State within the meaning of section 123(8) of the Representation of the People Act.

119. It is pertinent to note in this connection that according to section 123(8)(a), the Central Government can exclude any person from the operation of sub-section (8) *ibid* and similar power is given to the State Government under clause (b) of sub-section (8) *ibid*. But no such declaration by the State Government of Madhya Pradesh regarding the exclusion of its Ministers from the operation of the provisions of sub-section (8) *ibid* has been brought to our notice by either side, evidently because no such declaration by the State Government appears to have been made.

120. The only question which, therefore, remains for consideration in this connection is whether the Ministers are persons serving under the Government of the State. Here the important words are "under the Government" and we have to see what is the meaning of the word "government" used in this sub-section. In this connection it is pertinent to note that the definition of the word "Government" is not given in the Constitution of India. But it is provided under Article 367 of the Constitution that unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

121. The expression "State Government" has been defined in section 3(60)(b) of the Indian General Clauses Act, 1897, as follows:—

"As respects anything done or to be done after the commencement of the Constitution, shall mean, in a part A State, the Governor, in a part B State, the Raj Pramukh, and in a Part C State the Central Government."

Thus, according to this definition, the term "Government" as used in the Constitution is synonymous with the Governor, and the Government means the Governor.

122. This view is also fortified by Article 154(1) of the Constitution which lays down that the Executive power of the State shall be vested in the Governor

and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution, and according to Article 163(1) of the Constitution, the function of a council of Ministers is to aid and advise the Governor in the executive of his functions. The Article 154(1) of the Constitution is analogous to the provisions of section 49(1) of the Government of India Act, 1935. In *Emperor vs. Shibnath Banerji* (1945 M.L.J.325-A.I.R.1945 P. C.156), the question arose whether the Home Minister was an Officer subordinate to the Governor within the meaning of section 49(1) of the Government of India Act, 1935, and over-ruling the decision on this point in *Emperor vs. Hemendra Prasad Ghosh* [I.L.R.1939 Cal. 411 (Vol. II)] it was held by the Privy Council that the Home Minister was an officer subordinate to the Governor. In view of this decision it must be held that Shri Brijlal Biyani and Shri Anant are officers subordinate to the Governor within the meaning of Article 154(1) of the Constitution. As the term Government, as we have..... indicated above, means the Governor, they are persons serving under the Government within the meaning of section 123(8) of the Representation of the People Act, 1951.

123. This view is fortified by the decision in *Emperor Vs. Hemendra Prasad Ghosh* [L.L.R. 1939 Cal. 411 (Vol. II)] in which it was held that the Ministers are not the Government within the meaning of sections 17 and 124A of the Indian Penal Code. This view is only not affected but receives strong support from the Privy Council decision cited above. It is, however, urged by the learned counsel of the respondent No. 1, that in England and other democratic countries the Ministers are regarded as the Government. But that is not the legal meaning but only the popular meaning and popular expression. In law and according to our Constitution, Ministers themselves are not the Government but they are under the Government and their function is only to aid and advise the Governor in the executive of his functions as we have already pointed out. In England, Ministers are the servants of the Crown. But whatever may be the position in other countries, the provisions of our Constitution, in our opinion, unmistakably indicate that the Ministers serve under the Government of the State, which means the Governor of the State, and, therefore, we find that Shri Brijlal Biyani, the Finance Minister and Shri Ganeshram Anant, Deputy Minister, are the persons serving under the Government of the State of Madhya Pradesh within the meaning of section 123(8) of the Representation of the People Act, 1951. But as we have already stated as the other facts necessary to constitute corrupt practice within the meaning of section 123(8) *ibid* have not been pleaded or proved, the petitioner has failed to establish such a corrupt practice committed by respondent No. 1, or his agents or by any other person with the connivance of respondent No. 1, or his agents, and we find accordingly.

124. *Issues Nos. 11(a) to (d).*—These issues relate to the rejection of the nomination paper of the respondent No. 5, Thakur Bhuwan Bhaskar Singh of village Khatola by the Returning Officer of the Constituency. Document Ex. P-6 is the certified copy of the nomination paper Thakur Bhuwan Bhaskar Singh which was presented by him before the Returning Officer, Deputy Commissioner, Bilaspur on 26th March, 1953. That nomination paper was rejected at the time of the scrutiny by the Returning Officer on 27th March, 1953 and while doing so he passed the following order:

"No objection lodged. But I find that against Item No. 8, the candidate has mentioned his serial No in the roll as 76 of mauza Akaltara. His name is not on that Roll. He says it is of mauza Khatola. Name of the secondor is also not correct according to the Electoral Roll. He is asked to show cause why his nomination be not rejected. He does not wish to show cause. The nomination is, therefore, rejected."

The order does not mention, as contended by the respondent No. 1, that the respondent No. 5 told the Returning Officer that as he would have withdrawn in any case, he did not object to the nomination paper being rejected. We do not, therefore, accept this contention of the respondent No. 1.

125. It is undisputed that Mauza Akaltara, which is mentioned in Col. 8 of the nomination paper, is in the Akaltara-Masturi Constituency. The col. 7 of the nomination paper in question, however, shows Janjair-Pangarh Constituency as the constituency in the Electoral Roll in which the name of the candidate is included. The Returning Officer must have, therefore, naturally looked at the time of the scrutiny into the Electoral Roll of the Janjair-Pangarh Constituency and found, as he observed in his order, that the name of the respondent No. 5, was not in that Roll. The respondent No. 5, then stated before the Returning

Officer, as mentioned in his order, that serial No. 76 mentioned in col. 8 of the nomination paper was of mauza Khatola. Here it is pertinent to note that the respondent No. 5, did not state before the Returning Officer that Janjgir-Pangarh constituency mentioned in col. 7 of the nomination paper was wrong. Thus, as regards the respondent No. 5, there were two mistakes in the nomination paper in question; one in respect of the constituency in the Electoral Roll in which his name is included as mentioned in column 7 and second in respect of the village which he mentioned in col. 8.

126. Besides, there is nothing on record to show that the respondent No. 5, at the time of the scrutiny pointed out to the Returning Officer that his name is at serial No. 76 of the Akaltara Musturi Constituency as the certified copy Exh. P.10 of serial No. 76 of the Akaltara Musturi constituency shows. In this connection it is also significant to observe that there is a note No. 6 on page 6 of the printed form of the nomination paper that where the electoral roll is subdivided into parts and separate serial numbers are assigned to the electors in each part, a description of the part in which the name of the person concerned is entered must also be given in item Nos. 8, 10 and 14. Accordingly, the description in column No. 8 of the nomination paper should have been as "Revenue Inspector Circle, Baloda, Patwari Ilaka No. 8, mauza Khatola" as it is given in Exh. P.10. But this description is totally wanting in column No. 8 and, instead, absolutely wrong entry as "Patwari Helka No. 6, Mauza Akaltara, Circle Akaltara" is given therein. The Returning Officer was, therefore, right in coming to the conclusion, as he did, that respondent No. 5's name was not on that roll, that is to say the roll of Janjgir-Pangarh constituency mentioned in column No. 7.

127. Another mistake which the Returning Officer found in the nomination paper was that the name of the seconder was not correct to the electoral roll. The name of the seconder, according to the electoral roll of the Champa constituency is, as Ex. P.11 shows, Lilapansingh. But the name of the seconder shown in column 13 of the nomination paper in question is Lilamansingh. The Returning Officer was therefore, right in observing in his order that name of the seconder was also not correct according to the electoral roll.

128. Moreover, when the Returning Officer, as mentioned in his order, asked respondent No. 5, why his nomination paper be not rejected, presumably for the mistakes he found in it, the respondent No. 5, did not wish to show any cause. Those mistakes were so serious that they could create doubt about the identity of the candidate respondent No. 5, and of his seconder. We, therefore, think that Returning Officer could not condone such defects and there was no other alternative for him but to reject the nomination paper in question. It is true that no objection was raised to the nomination paper in question. But even then he was bound to examine it and he could refuse it on any of the grounds mentioned in clauses (a) to (e) of sub-section (2) of section 36.

129. The learned counsel of the petitioner, however, urged that it was the duty of the Returning Officer under section 33(5) of the Representation of the People Act on the presentation of nomination paper to satisfy himself that the names and electoral roll numbers of the Candidate and his proposer and seconder as entered in the nomination paper were the same as those in the electoral rolls and when he did not perform this duty at the time of the presentation of the nomination paper, he could not subsequently reject the nomination paper, for the mistakes in question. We think that this contention is not correct. In our opinion, though the Returning Officer does not appear to have done his duty as required by Section 33(5) of the Act, that did not absolve the petitioner from performing his duty to present a nomination paper containing correct entries. He should have at any rate sought the permission to correct it immediately after its presentation. This view is fortified by the decision of the Election Petition Commission in *Mr. Malhar Rao Vs. Mr. Vinhnupant* regarding Gondia General Rural Constituency reported in India Election Cases Vol I by Doabia at page 206. It was also held therein that the omission from the nomination paper of sub-division of the electoral roll in which the numbers of the candidate's proposer and seconder could be found was material and on that ground the nomination paper was validly rejected.

130. It is, however, urged by the learned counsel of the petitioner that the defects in the nomination paper in question were technical and not of a substantial character and therefore the Returning Officer could not reject the nomination paper in view of section 36(4) of the Representation of the People Act. We do not agree with this contention. The defects in the nomination paper were, in our view material and substantial, because in view of those defects the identity and eligibility of the candidate and his seconder were doubtful.

131. We, therefore, find that the Returning Officer did not improperly reject the nomination paper respondent No. 5, and he did not act illegally in rejecting it. Consequently, the question whether the result of the election was materially affected by the improper rejection of nomination paper of respondent No. 5, does not arise for decision. But we are of the opinion that it is well settled that when nomination paper of a candidate is improperly rejected, the ordinary presumption is that the result of the election has been materially affected and strongest and most conclusive proof would be required for its rebuttal. However, such a presumption does not arise as we have found that there was no improper rejection of the nomination paper in question.

132. *Issues Nos. 9(a) and (b).*—These issues relate to the return of election expenses lodged with the Returning Officer by the respondent No. 1. The original election return in question is Ex. P.5 and its certified copy is Ex. P.7. This return shows only the payment of Rs. 3/6/- on 25th April 1953 to Shrikrishna Press, Bilaspur, on account of printing of 200 agents' forms. The evidence of Shyamnarain (P.W.21), the Manager of Shrikrishna Press, Bilaspur, which has been already discussed, does not establish that printing of 1,000 copies of the pamphlet bearing heading *parti dalalon se saadhan* was done in his Press under Order No. 613 in the name of respondent No. 1, or printing of 2,000 election pamphlets under Order No. 595 dated 13th April, 1953 in the name *Tehsil Congress Chunao Morcha* through Bisahu Paliwal or the printing of 1,000 copies of pamphlet described as *Congress Zindabad wa Mahato ka Patra* under order No. 597 dated 13th April, 1953 in the name of the respondent No. 1, through Bisahu Paliwal was done at the instance of respondent No. 1, or his agent or by some other person with his connivance. In the absence of such evidence, it cannot be said that the expenses relating to such pamphlets were incurred to the knowledge of respondent No. 1. In connection with his candidature. Further, it is not proved that the pamphlet Ex. P.1 or the other pamphlets in question were got printed and were distributed by or at the instance of or with the connivance of the respondent No. 1. The expenses of printing and distribution of the pamphlets filed by the petitioner of the pamphlets referred to in his evidence by Shyamnarain (P. W. 21) could not, therefore, be shown by the respondent No. 1, in the Return of his Election Expenses and he cannot be held responsible for not showing the said expenses in his Return of Election Expenses.

133. It is, however, true that according to Shyamnarain (P. W. 21), in his *tokad* of 25th April, 1953 there is no entry of receipt of Rs. 3/6/- from respondent No. 1, in respect of the printing of 200 agents' forms, but there is an entry of the receipt of Rs. 2/6/- from respondent No. 1, on 24th April, 1953 in respect of printing of 155 Agents' forms. We see no reason to disbelieve him in this respect and thus the payment of Rs. 3/6/- shown in the Return of Election Expenses in question to have been made on 25th April, 1953 in the name of Shrikrishna Press, Bilaspur. In respect of printing of 200 Agents' Forms is incorrect and correct entry should have been of the payment of Rs. 2/6/- on 24th April, 1953 in respect of printing of 155 forms. But this discrepancy in the election return in question is trivial and it may be due to oversight or due to wrong information received by respondent No. 1, in this matter. From this fact alone, it cannot be inferred that in this respect the Return of Election Expenses in question or the making of a declaration verifying the said Return is false in any material particular. We, therefore, find that the minor corrupt practice of the making of false Return of Election Expenses in any material particular or the making of false declaration verifying such Return by the respondent No. 1, is not proved within the meaning of section 124(4) of the Representation of the People Act, 1951.

134. The question, therefore, whether the making of the return of Election Expenses in question by the respondent No. 1, has materially affected the result of the election does not arise for decision. Even assuming that such a question arises, there is no evidence to show that thereby the result of the election has been materially affected within the meaning of section—100(2) (a) or (c) of the Representation of the People Act. We, therefore, find that though the Return of Election Expenses filed by the respondent No. 1, does not include the expenditure incurred by or for him for printing of pamphlet Ex. P.1, or the other pamphlets filed by the petitioner, the Return in question is not false in any material particulars and in any case the result of the election in question has not been materially affected by the falsity, if any, in the Return in question.

135. *Issue No. 12.*—Thus none of the facts alleged by the petitioner and contained in issues Nos. 1. to 11 is proved and, therefore, none of the grounds for

declaring election to be void under section 100 of the Representation of the People Act, 1951, is proved.

136. *Issues Nos. 13(a) and (b).*—In view of our findings on the issues Nos. 1 to 12 the election of the respondent No. 1, cannot be declared void and we find accordingly. The question of declaring the respondent No. 2, to be duly elected does not, therefore, arise. But if any corrupt or illegal practice had been proved, the question whether but for the votes obtained by the returned candidate, respondent No. 1, by such corrupt or illegal practice, the respondent No. 2, would have obtained a majority of valid votes would have depended on the nature, efficacy and the extent of the corrupt or illegal practice proved in the case. But such a question does not arise as no corrupt or illegal practice has been proved.

137. *Issue No. 14.*—The result, therefore, is that the petition is dismissed. As the petitioner has failed on almost all the issues in the case, the rule that costs should follow the event must apply and accordingly we order that the petitioner shall bear his own costs and pay to the respondent No. 1, all costs incurred by him. Pleader's fee is allowed to the extent of Rs. 1,000 for each side, if certified.

The 21st October, 1954.

(Sd.) T. R. GOSEWADE, *Chairman,*

(Sd.) M. BAJPAI, *Member,*
Election Tribunal, Raipur.

By SHRI MANDELKAR.

BEFORE THE ELECTION TRIBUNAL, RAIPUR

(Madhya Pradesh)

ELECTION PETITION No. 10 OF 1953

Thakur Dausingh, aged about 55 years, son of Sheoprasadsingh, resident of mouza Pondi (Shankar), tahsil Janjgir, district Bilaspur.—*Petitioner.*

Vs.

1. Shri Ramkrishna Rathor, son of Mohan, resident of village Dharashiv, tahsil Janjgir, district Bilaspur.
2. Thakur Chhedilal, son of Pachhoud Singh, Bar-at-law, resident of Bilaspur, tahsil and district Bilaspur.
3. Shri Chinta, son of Gokul, resident of village Dharashiv, tahsil Janjgir, district Bilaspur.
4. Shri Ratan Singh, Advocate, Janjgir, tahsil Janjgir, district Bilaspur
5. Thakur Bhuwan Bhaskar Singh, son of Pachkaud Singh, resident of village Khatola, tahsil Janjgir, district Bilaspur.—*Respondents.*

ORDER

(PASSED THIS 21ST DAY OF OCTOBER 1954)

1. The petitioner, Thakur Dausingh, as an elector of the Champa Constituency of Madhya Pradesh State Legislative Assembly, has challenged the election of Respondent No. 1, Shri Ramkrishna, who has been declared elected at the bye-election held on 3rd May 1953; petitioner has asked for the relief that Respondent Shri Ramkrishna's election be declared void and that Respondent No. 2, Thakur Chhedilal Barrister be declared duly elected.

2. The gravamen of the petitioner consists in asserting that the nomination paper of Respondent No. 5. Thakur Bhuwan Bhaskar Singh has been improperly rejected and that there have been corrupt practices committed by Respondent No. 1, of undue influence, false propaganda, and obtaining the assistance of the persons serving under the State *viz.* the Ministers in furtherance of the prospects of election, as falling under various clauses of section 123 of the Representation of the People Act 1951, and also corrupt practices of making return of election expenses, false in material particulars, and systematic appeal on ground of community, as falling under clauses 4 and 5 of the minor corrupt practice, under section 124 of the Act, and also of illegal practice under Section 125(3) of issuing circulars having reference to the election, as it does not bear on its face the name and address of the printer and publisher. These minor corrupt practices, and illegal practices and the improper rejection of the nomination form have materially affected the result of the election.

3. The respondent No. 1, Shri Ramkrishna got 7650 votes and respondent No. 2, Thakur Chhedilal Barrister got 7172 votes, that is 478 votes less than Respondent No. 1. The contention of the petitioner is that the result of the election would have been in favour of respondent No. 2, in as much as but for the votes obtained by Respondent No. 1, by corrupt or illegal practices, Respondent No. 2, would have obtained a majority of the valid votes.

4. The petitioner is an elector entered at number 582 in village Pondi (Shankar) in the electoral roll of the Champa Constituency of the Madhya Pradesh State Legislative Assembly; this is proved by the certified copy of the entry of the electoral roll. The finding of issue No. 1, is in the affirmative.

5. *Issue Nos. 11(a), (b), (c) and (d).*—The petitioner has challenged the election of Respondent No. 1, contending that Respondent No. 5 is an elector, entered at No. 76, from village Khatola in Akaltara-Masturi Constituency of Madhya Pradesh State Legislative Assembly and was qualified to contest the bye-election from Champa Constituency, and that the rejection of nomination paper of Respondent No. 5 is improper and that the Returning Officer acted illegally in rejecting the nomination paper. The Respondent No. 1, contends that the rejection of the nomination paper of Respondent No. 5, was proper; he has however not denied the identity of Respondent No. 5, as being an elector entered at No. 76, from village Khatola, in Akaltara-Masturi Constituency; he supports the order of the Returning Officer as being proper.

6. The nomination paper of Respondent No. 5 did mention his Serial number as 76 out of Mouza Akaltara, the name of the candidate i.e. Respondent No. 5, is as per entry No. 76 of Mouza Khatola. Both Akaltara and Khatola are villages in Akaltara-Masturi Constituency, in Bilaspur District. The mistake in the nomination form of Respondent No. 5, was in giving the name of the village. That the name of the village was Khatola instead of Akaltara appears to have been told to the Returning Officer at the time of the scrutiny, as is clear from the contents of the order of the Returning Officer, rejecting the nomination paper. There is another ground mentioned in the order of the Returning Officer that the name of the seconder is not correct according to the electoral roll; but on comparison of the roll and the name of the seconder in the nomination form, no difference could be seen nor was any difference pointed out by the Respondent No. 1; however the so-called difference in the name of seconder referred to by my colleagues, is extremely trivial as not to create doubt of identity of the seconder.

7. A nomination form, completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons as proposer and seconder, has to be delivered to the Returning Officer. The names of Proposer and Secunder have to be from the electoral roll of the Constituency where the election is being held; but as far as the candidate is concerned, he could stand if his name is entered in the electoral roll of any Constituency, of the same class i.e. of Assembly or Parliament. Though the Returning Officer has been given the power to reject the nomination paper he cannot do so on the ground of any technical defect which is not of a substantial character.

8. In the instant case, besides intimating that Roll No. 76 was of Mouza Khatola, instead of Akaltara, at the time of Scrutiny, Respondent No. 5, did not do anything, though he was asked to show cause by the Returning Officer why his nomination form should not be rejected. Returning Officer has not mentioned that the name of the Candidate i.e. of Respondent No. 5, did not answer even the description of the candidate as given in the nomination form. The petitioner has filed the certified copy of the entry of the electoral roll No. 76 of Mauza Khatola in Akltara-Masturi Constituency.

9. There was no objection raised by any candidate to the nomination paper of Respondent No. 5, at the time of Scrutiny, by the Returning Officer. Nomination paper cannot be amended or corrected when once it is filed. The Returning Officer on the presentation of a nomination paper has to satisfy himself if the name and the electoral roll number of the Candidate tallies with those given in the nomination paper and he has been empowered to permit any clerical error to be corrected in order to bring the entries in the nomination paper, in conformity with the corresponding entries in the electoral roll and where necessary to overlook such errors. The candidate must be described in the nomination paper in such manner as in the opinion of the Returning Officer is calculated sufficiently to identify him. If the materials available to the Returning Officer are not sufficient to identify the candidate, regarding his right to stand as a candidate, the Returning Officer can order the candidate to produce the copy of the entry

of the electoral roll in which the name of the candidate is included. In the present case, the electoral roll of Akaltara-Masturi Constituency was available to the Returning Officer at material times. The Returning Officer has not rejected the nomination form on the ground that the name of the Respondent No. 5, did not answer the description of roll No. 76 of village Khatola and that he was not the said elector.

10. Under Article 326 of the Constitution, the election to the House of People and to the Legislative Assembly shall be on the basis of adult suffrage. There is no law so far on the Statute, imposing restrictions even on the ground of non-residence in matter of exercise of right of any elector to stand as a candidate from any Parliamentary Constituency as far as membership of House of People, provided he is an elector for any Parliamentary Constituency and for a State Assembly, provided he is an elector for any Assembly Constituency in that State. This right of universal adult franchise cannot be taken away by imposition of restrictions by prescribing qualifications entitling persons to vote like the provisions in the Government of India Act of 1935. Franchise is thus the rule and refusal under extreme defects of substantial character is an exception.

11. What is the effect of error in the nomination paper when it mentions Akaltara instead of Khatola, though the error was brought to the notice of the Returning Officer, before he could call upon the Respondent No. 5, to show cause, against the proposed order of rejection of nomination paper? The electoral roll of Akaltara-Masturi Constituency was with the Returning Officer and hence no question of filing a copy of the electoral roll entry arose, nor was the identity of Respondent No. 5, being the elector as mentioned in entry No. 76 of village Khatola, disputed.

12. Electoral roll of Akaltara-Masturi Constituency in which the name of Respondent No. 5, is included as No. 76 of village Khatola is sub-divided into parts and separate serial numbers are assigned to the electors entered in each part. Though in the nomination paper of Respondent No. 5, is mentioned the sub-divided part, he mentioned incorrectly the sub-divided part of the electoral roll i.e. Akaltara instead of Khatola. The idea underlying the details in the nomination form is to satisfy the Returning Officer about the identity of the candidate, with reference to the entries in the electoral roll, to show that the candidate is the person recorded as an elector; this can be done by asking the candidate to produce the copy of the electoral roll, if that roll is not before the Returning Officer; this does not mean that the Returning Officer is to be satisfied regarding these particulars only by the production of the copy of entry in the electoral roll; There can be other modes also than the one laid down in section 33(6) of the Representation of People Act, 1951. (*Vide Ugamsingh Vs. Harisingh VI Election Law Reports page 470 at 476*). Thus before the nomination form of Respondent No. 5, was rejected by the Returning Officer he had been apprised of the electoral roll No. 76 being of the village Khatola in Akaltara-Masturi Constituency and it did remove all reasonable doubts, created if any, by the initial mistake.

13. There is another way to look at this very question. Under section 33(5) of the Representation of People Act, 1951, on the presentation of the nomination paper, the Returning Officer has to satisfy himself that the names and electoral numbers of the Candidate are the same as those entered in the electoral roll; this is a duty cast on the Returning Officer and accordingly in the instant case, there is a remark on the nomination paper of Respondent No. 5, "No Objection" bearing the date of presentation of the nomination paper. This should amount to sufficient satisfaction for the fulfilment of conditions laid down in section 33(5) of the Act. At least any further wrecking-up of the controversy would not have the merit of ground, sufficient to reject the nomination paper, *suomoto* and without any objection from any of the candidates, as the objection may at the most be a technical defect, but not of a substantial character.

14. The provisions regarding the filing up of nomination forms are not absolute and need not be followed exactly; they are merely directory. Rules do not insist on meticulous accuracy and compliance in filing the nomination form and as such, substantial compliance with directions is all that is required. The breach in the present case is not a breach of any mandatory provision of law and cannot invalidate the nomination paper of Respondent No. 5. The mistake committed about the internal sub-division of Akaltara-Masturi Constituency cannot be worse than omission to mention the sub-division of the electoral roll. If no doubts are likely to arise as to the identity of Respondent No. 5, by reason of mentioning the wrong sub-division at the initial stage and corrected before scrutiny, even verbally, as to apprise the Returning Officer of his identity, the omission or

wrong description in the nomination form cannot be considered as a drawback going to the root of the validity of the nomination paper. At the most the Returning Officer was required to have considerable search before the relevant entry could be found and still it cannot but be substantial compliance with the law and as such the nomination paper of Respondent No. 5, ought not to have been rejected. The rejection of the nomination paper of Respondent No. 5, is thus improper and illegal. (*Vide* Suratsingh V. Jang Bahadursingh and others IV Election Law Reports page 306, Mathradas and another V. Dara Singh and others IV Election Law Reports page 441, Ramsingh V. Hazarilal and others VI Election Law Reports page 224, Shiv Dayal and others V. Teg Ram and others VI Election Law Reports page 346, and Ajyab Singh and others V. Karnail Singh and others VI Election Law Reports page 368).

15. It is urged on behalf of Respondent No. 5 that there was a duty cast on Respondent No. 5 to correct the nomination paper and he deliberately did not correct the mistake in as much as he was dummy candidate of Respondent No. 2 and in as much as he would have withdrawn his candidature after the valid scrutiny and acceptance of nomination form of Respondent No. 2, and did not thus care to correct the errors in his own nomination form and to this effect Respondent No. 5 is alleged to have stated before the Returning Officer. No material has been placed before the Tribunal to show that the rejection of nomination paper of Respondent No. 5 was after the acceptance of the nomination paper of Respondent No. 2; this is not also mentioned as a ground by the Returning Officer suggesting that the nomination paper is rejected at the instance of Respondent No. 5, though it is doubtful if it could be done by the Returning Officer. There cannot be verbal withdrawal from candidature, a writ is required by law to be in writing in the form of notice. Thus there is no merit in the suggestion of Respondent No. 1 that the nomination form of Respondent No. 5 was tantamount to withdrawal of candidature by him.

16. The next point that is urged is that granting that there is improper or illegal rejection of nomination paper of Respondent No. 5, it has no consequence in setting aside the election of Respondent No. 1, as the result of election has not been materially affected by reason of the rejection of the nomination Paper of Respondent No. 5.

17. Illegal rejection of a nomination paper has deprived the electorate of Champa Constituency of its right to vote for respondent No. 5, who is otherwise entitled to stand; the Courts have uniformly held that in the case of improper or illegal rejection of nomination paper, the result of election has been materially affected and that the election as such was liable to be declared void. (*Vide* Ramlal V. Sujaniram and others II Election Law Reports page 27). Even in the case of improper acceptance of nomination forms of successful candidates, presumption that the result of election has been materially affected arises. (*vide* Thakur Daosingh v. Ramkrishna Rathor and others IV Election Law Reports page 34 at page 52).

18. The presumption that the result of election has been materially affected raised by the rejection of a nomination paper of a candidate who could stand at the election is, like every other presumptions, rebuttable. It is urged on behalf of Respondent No. 1 that even though the nomination form of Respondent No. 5 had not been rejected, he would have withdrawn his candidature as he was a dummy candidate and he did actually canvass in the election for Respondent No. 2. That he would have withdrawn is no rebuttal; what has to be shown to rebut the presumption is that Respondent No. 5 having stood also would not have affected the majority of votes obtained by Respondent No. 1. This could be done by respondent No. 5 getting a slice out of the votes obtained by Respondent No. 1 and from Respondent No. 2 as well. This is all exploring theoretically and is no answer to the presumption to be drawn in the case. The fact that Respondent No. 5 canvassed for Respondent No. 1 after the rejection of his nomination form does not mean that the total votes which the respondent No. 2 obtained includes the votes which Respondent No. 5 would have obtained if he had stood, in addition to the candidature of Respondent No. 2. Though the candidates are set up by the Parties running the elections still there is a personal factor of popularity or unpopularity of the Candidate, though the candidates are described figuratively as "lamposts with party labels." The presumption thus raised is not rebutted and hence by the improper rejection of the nomination paper of Respondent No. 5, the Returning Officer acted illegally and the result has been materially affected, entailing setting aside the election of Respondent No. 1.

19. It is urged by the Respondent No. 1 that this rejection of nomination paper is under section 100(2) (c) and not under section 100(1) (c) of the Representation of the People Act, and he relies on the decision of the Supreme Court as reported in A. I. R. 1954 S. C. 520. Durga Shankar vs. Raghuraj Singh. That case was a case of improper acceptance of nomination paper and the disqualification urged for rejecting the nomination paper was, on the allegation that the electoral roll entry regarding age was incorrect; this was treated as an objection not falling within the purview of section 100(1) (c) but falling under section 100(2) (c) of the Representation of the People Act. No doubt "non-compliance" is wide term and would include infractions of the provisions of the Act. But non-compliance in section 100(2) (c) must be taken as a residuary provision contemplating cases where there has been infraction of the provisions of the Constitution or of the Representation of the People Act, 1951, but which have not been specifically enumerated in the other portions of the section i.e. in section 100(1) (c). The rejection of the nomination paper of Respondent No. 5 being improper and illegal, interference by the Tribunal is and could be only under section 100(1) (c) of the Representation of the People Act, 1951. The findings on issue No. 11 are that there was improper rejection of nomination paper of Respondent No. 5 and that he was an elector entered at No. 76 from village Khatola in Akaltara-Masturi Constituency and that he was qualified to stand for the bye-election and that the Returning Officer ought to have accepted the nomination paper of Respondent No. 5 and that he acted illegally in rejecting the same. This aspect becomes material because in interfering under section 100(1) (c) and not under section 100(2) (c) a substantial difference is caused in the declaration of the decision of certain points raised by the petitioner in the case. In accepting the view that by improper rejection of nomination paper of Respondent No. 5, result has been materially affected, under section 100(1) (c) the election held on 3rd May, 1953 is declared wholly void and that is the view which is correct one deducible from the data on record. This should have been sufficient to dispose off the election petition; but since there is a right of appeal given to the parties to the Supreme Court though under the special leave, it is necessary that all issues are decided. This principle is well recognised when ordinarily even when there is a right of appeal, the first court must decide all issues and should not be sanguine of the correctness of its views, besides the Tribunal has also to pass adequate orders under section 99 of the Representation of the People Act, 1951.

20. *Issues 10 and 4.*—Regarding the issues 10 and 4, they arise out of para. 10 of the petition. Petitioner's counsel urged that the facts contended by the petitioner necessitate the application of law as contained under section 123(8) and 123(2) of the Representation of the People Act. It is seriously contended on behalf of Respondent No. 1 that there is no pleading in the sense that there is no mention of section 123(8) as regards corrupt practice referred to in para. 10 of the petition. No new heads of corrupt or illegal practices would be permissible to be added, but it is not necessary to plead law, as a pleading should contain only facts and not law. If the facts alleged and proved bring the case under this or that head of major or minor corrupt practice or illegal practice, such jurisdiction to apply law to facts, is not ousted, even under the limited interpretation that could be put on section 83 of the Representation of People Act. The Petitioner can thus show that the admitted or proved facts make out a case under sections 123(2) and 123(8) of the Representation of the people Act, 1951.

21. The admitted and proved facts are that Shri Brijlal Biyani, Finance Minister of Madhya Pradesh State and Shri Ganeshram Anant, Deputy Minister, Madhya Pradesh State toured in the constituency and canvassed for votes for the Respondent No. 1. They addressed meetings attended by voters and canvassed for support in the presence of Respondent No. 1. These persons claim to have canvassed because they belong to the Congress Organisation, which has set up Respondent No. 1 as a candidate for the bye-election. There is no evidence to connect the Respondent No. 1 with the visit of these two Ministers to the Constituency being at his instance; Ministers concerned may have felt impelled to visit the Constituency as a duty to the Congress Organisation or may have been requested to visit the Constituency at anybody-else's instance but this by itself would not reflect on the Respondent No. 1.

22. No doubt the position of a candidate at an election is like that of yacht-owner. When the owner goes abroad and finds captain and crew there, the very fact that he consents to sail with them makes them perforce his agents for the purpose of sailing the race in accordance with the laws of Course. "The substance of the principle of agency is that if a man is employed at the election to get votes or without being employed he is authorised to get your votes, or if although neither employed nor authorised he does to your knowledge get you votes, and you

accept what he has done and adopt it, then he becomes a person for whose acts you are responsible in the sense, that if his acts have been of an illegal character, you cannot retain the benefit which those illegal acts have helped to procure for you. That is clearly established law. It is hard upon candidate in one sense, because it makes them responsible for acts which are not only not in accordance with their wish but which are directly contrary to it. But this law is purest justice and common sense "[vide (1906) 5 O'M. & H, 178 Great Yarmouth Case]. Political associations which set up candidates are the agents of the Candidate for the purposes or Representation of People Act; its active members are the agents of the Candidate. [Vide Shri Mohanlal V. Shri Tilochansing and others published in Gazette of India Extraordinary dated 27th November, 1952 page 2489, at page 2495 para. 8(a)]. Thus both Shri Biyani and Shri Ganeshram Anant by virtue of their having canvassed for votes in the presence of Respondent No. 1 have constituted themselves as agents of Respondent under election law.

23. Shri Biyani has stated, "I was Minister at the time of Champa, Janjgir Bye-election held in May 1953. I had gone at Champa Janjgir elections to canvass on behalf of the Congress candidate, Shri Ramkrishna Rathor for Champa Constituency and Shri Lakheshwar Paliwal for Janjgir-Pamgarh Constituency..... At some places in the meetings addressed by me the Congress candidates were present.....I went there in the capacity of a Congress-man and canvassed for the congress candidates." Shri Ganeshram Anant also deposed, "I had been to Champa and Janjgir-Pamgarh Constituency's bye-election for canvassing on behalf of Congress Candidates. The elections were held in the month of May 1953.....At some places I had been with Shri Brijlal Biyani the Finance Minister for canvassing during elections.....My tour programme of the election was intimated to the Deputy Commissioner Bilaspur.....During my election tour the respective candidates accompanied me at some places..... I was present in the political conference at Naila or Janjgir on or about 25th or 26th April, 1953, which was addressed by Shri Brijlal Biyani. I had also addressed the Conference. In that conference both myself and Shri Biyani solicited votes for the Congress Candidates in both the Constituencies." Shri Ramkrishna, Respondent No. 1 has deposed "Shri Ganeshram Anant among the Harijan Leaders had come to my Constituency to work for me and so also Shri Brijlal Biyani who visited Champa and Bamnidih where I was with him.....Shri Biyani toured in my constituency only for two days.....Shri Ganeshram Anant toured with Shri Biyani.....I am member of Tehsil Congress Committee Janjgir."

24. The above statements establish beyond doubt that both the Ministers were the persons whose assistance was obtained for furtherance of the prospects of his election by Respondent No. 1, the Ministers have thus constituted themselves as agents in connection with the elections with the knowledge or consent of the candidate, the Respondent No. 1, as canvassers are agents under Election Law and particularly of the type of Shri Biyani and Shri Ganeshram Anant.

25. This by itself would not make the conduct of Respondent No. 1, as a conduct of Corrupt Practice envisaged under clause (8) of section 123, unless Ministers are shown to be persons serving under the State.

26. Under the Constitution, Minister is treated as holding an office of profit, under Article 191 as being held by him under the State. The expression "under the State" is used in section 123(8) of the Representation of the People Act, 1951. "State" in the Constitution means the Governor in Part A State. [vide section 3(60) General Clauses Act and Article 367 of the Constitution and also Bholanath V. Krishanchandra Gupta and other VI Election Law Reports page 104 at page 117.]

27. The Executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him; no doubt the Ministers are there but they are only to aid and advise the Governor. Powers are very nearly the same as were contained under the Government of India Act 1935. This aspect of the case was examined in Emperor V. Sibnath Bannerjee reported in 1945 A.I.R. Privy Council 156 at 163, wherein Their Lordships stated, "So far as is relevant in the present case Their Lordships are unable to accept the suggestion by Council for Respondents that the Home Minister is not officer subordinate to the Governor. While a Minister may have duties to the Legislature, the provisions of section 51 as to the appointment, payment and

dismissal of Ministers, and section 59(3) and (4) of the Act 1935 and business rules made by virtue of section 59, place beyond doubt that the Home Minister is an officer subordinate to the Governor." The provisions under the Government of India Act 1935, have more or less been reproduced in the Constitution (*vide* Articles 163, 164, 166 and 167). Thus the Ministers are the officers subordinate to the Governor i.e. the State.

28(a), This point was considered in Election Petition case of Shri Amirchand V. Shri Surendralal Jha and others reported in Gazette of India Extraordinary, dated 10th June 1954 page 941; that decision is clearly erroneous in as much as the Tribunal has ignored the definition of "State" as given in the General Clauses Act and has decided the case on "common parlance" meaning of Government. Even the analogy of Mr. Gladstone's famous Midlothian campaign of canvassing is inconsistent with the resolution of House of Commons. "In 1779 the House of Commons resolved that it is highly criminal in any Minister or Ministers or other servants of the Crown directly or indirectly to use the powers of office in the election of representatives to serve in Parliament; and an attempt at such influence will at all times be resented by this House as aimed at its own honour, dignity and independence as an infringement of the dearest rights of every subject throughout the Empire and tending to sap the basis of the free and happy Constitution." Moreover when there is a Statute like the Representation of People Act, 1951, which includes the Ministers under the class of persons serving the State, nothing more is needed to refer for finding out the position of Ministers except the Constitution. There could be exemption for the Ministers from the effects of the clause (8) to section 123 of the Act, like Article 191(2), but as long as there is no declaration by the State Government that the provisions of clause 123(8) would not be applicable to the Ministers, they would be hit by the effects of this clause and would be painted with the tar-brush of the entire category of servants of the State. Thus Shri Biyani and Shri Ganeshram Anant answer the description of persons serving the State of Madhya Pradesh. The conclusion is that Respondent No. 1, obtained or procured the assistance of these Ministers for furtherance of prospects of election, by constituting them as canvassers and thus agents as understood under Election Law. The conduct of Respondent No. 1, falls under section 123(8) of the Representation of the People Act, 1951 and he is found to have committed a major corrupt practice.

28(b). Regarding the speeches of Shri Biyani and Shri Ganesh Ram Anant, the exact words, what these witnesses are alleged to have said, are not proved. As stated in section 123(2) any direct or indirect interference or attempt to interfere on the part of Candidate or agent, with the free exercise of any electoral right is undue influence. It is contended on behalf of Respondent No. 1, that even though the Ministers may be Government Servants as understood under section 123(8) still unless their speeches on canvassing can be described as undue influence the provisions of section 123(2) would not be attracted, as there is no prohibition for a Government Servant to canvass by himself. The definitions of various corrupt practices show that the Legislature is anxious to keep elections free and pure; any influence that would affect the freedom and purity of elections will come within one or other of the several categories of corrupt and illegal practices. Though the sections purport to define exhaustively several categories of corrupt and illegal practices, the ingenuity of politicians is such that offences against purity of elections are constantly liable to occur which are not specifically covered by the Statute. It would be a reproach to the law were it powerless to punish them.

29. Undue influence for being hit by section 123(2) would be the same, whether it be by the person serving the State or by any other person; it must conform to the contents of the definition. No doubt the Servant of the State might carry inherent power to exercise undue influence but unless he transgresses the limits set by definition of undue influence as laid down in section 123(2) of the Act, the mere fact he is a servant of the State would not by itself constitute undue influence.

30. The policy and theory of election law is that every person upon whom the election franchise is conferred should judge for himself who is the best and preferable candidate and given his vote accordingly. No doubt undue influence is undue and improper pressure put upon a voter because of the incapacity of the

voter created thereby from giving valid and effective vote, taking into account the ordinary nerve and courage of a voter to resist such influence. Though it is well known that in the infant State of our Sovereign Democratic Republic, the dearest interest of every citizen is closely connected with the purity of Election Machinery and enforcement of Election Law, still the evil of using servants of the State and State Machinery for winning the elections cannot be stopped unless the provisions of law are supplemented. The existing law only permits the candidate guilty of corrupt practice to be disqualified and so also the Servant of the State if his conduct falls under provisions of Election Law, apart from the provisions of Criminal Law.

31. Reading the allegations of the petitioner and proof thereof against the speeches made by Shri Biyani and Shri Ganesh Ram Anant they do not come under the category of undue influence. The conclusions are therefore that Shri Brijlal Biyani addressed political conference at Naila and public meetings at Champa etc. on or about 26th and 27th April; Shri Biyani is not proved to have exhorted the voters that in case they voted for non-congress candidate, progress of five years plan would be hindered and that the ballot box of Respondent No. 1 was the ballot box of the Government. As no propaganda which would be hit by undue influence was carried on by Shri Brijlal Biyani, no question of connivance by Respondent No. 1 does arise. Similarly Shri Ganesh Ram Anant did not bring to bear undue influence by his speeches; no question of connivance by Respondent No. 1, in the case of Shri Ganesh Ram Anant does also arise.

32. *Issues Nos. 2, 3, 5, 6 & 7.*—These relate to the printing and distributing of pamphlets by Respondent No. 1. It is fairly certain that the pamphlet Ex. P.1 printed at the Shrikrishna Printing Press Bilaspur was got printed by Respondent No. 1, the evidence of the Manager of Shrikrishna Press is quite convincing and hence it cannot but be held that the leaflet was printed by Respondent No. 1, no question of giving the benefit of doubt to Respondent No. 1 does arise. Further the leaflets have been distributed by the Respondent No. 1. The leaflets themselves are original documents, no matter whether the original manuscripts are not proved to be in the hand of Respondent because the original is not available and lost by the Manager Shrikrishna Press. The printed leaflet is made by one uniform process and that itself is primary evidence of the documents distributed. (Vide section 62 of the Evidence Act.) Except for the proof of the fact that some of these Leaflets do not bear on their face the name of printer and publisher, there is nothing objectionable as to be hit either by provisions of section 123(2) or 123(5) of the Representation of the People Act, 1951.

33. Constitution has guaranteed freedom of speech and expression and it is curtailed by way of reasonable restriction in public interest to the extent of limitations laid down in section 123(2) and 123(5) of the Act. Unless there is a reference to a personal character the statement would not be hit by section 123(5) of the Act, though the statement may be false and calculated to prejudice the prospects of the candidate's election. Personal character referred to in relation to section 123 (5) would not curtail references to such character, permissible under the existing law of Defamation. There is a certain degree of reference to personal character even with regard to public questions, sought to be criticised with regard to the Candidate; criticism cannot be in abstract. Candidates cannot assume the position of resting in glass-houses during the period of their candidature. Elections are meant to put into hotch-pot political theories and also put under search-light the real public-man screened under the symbol or camouflage of Party Label. Moreover if the propaganda was capable of being interpreted as relating to personal character of Respondent No. 2, he would have filed a complaint in a Criminal Court or filed a suit for damages by now. If the petitioner cannot do any of these things himself either in a Civil or Criminal Court those rights are not enlarged under Election Law, and yet judging by the contents of the various documents, there is nothing which could be hit by false propaganda affecting the prospects of election by referring to personal character of Respondent No. 2. The leaflets and issue thereof is not objectionable under Election Law under sections 123(2) and 123(5). They are not hit by section 124(5) as well, as the appeal on the ground of community must have a reference to the community or caste of the candidate; and not of those backing it; admittedly the candidates were not Harijans and no such question of community or caste appeal could be made by Harijan Leaders. The leaflets are not hit by section 124(5) as well.

34. There is no proof of any Motor Car being hired as alleged by the Petitioner; the finding on the issue No. 8 is thus in the negative.

35. As already held that the leaflet Ex. P-I was got printed by the Respondent No. 1, for which he has paid to the Shrikrishna Printing Press and the omission to show that amount in the expenditure in the return of election expenses is an omission of material particular thus rendering the return of election expenses false in material particulars, and hit by section 124(5) of the Representation of the People Act, 1951.

36. The leaflets have been proved to have been distributed by Respondent; those of the leaflets which do not bear the name of the printer and publisher are hit by section 125(3) making the conduct illegal practice. It is contended that the signature on the leaflets should be sufficient to indicate that the same was printed by the signatory. The signature on the leaflets is only an indication that the signatory has issued them; the name of printer and publisher has reference to the printing press and that is a separate category of signatures required, from being saved from the guillotine of illegal practice. The finding on issue No. 6(d) is that the pamphlets in question did not bear the name of printer and publisher thereof.

37. Issue No. 12.—Procuring the assistance of Shri Biyani and Shri Ganesh Ram Anant, who are both persons serving the states, in furtherance of the prospects of election amounts to major corrupt practice under section 123(8) of the Representation of People Act, 1951. The minor corrupt practice consists in not showing the expenses incurred in printing the leaflet printed at Shrikrishna Printing Press and is hit by provisions of section 124(4) of the Act. Similarly the issuing of leaflets without the name of printer and publisher amounts to illegal practice. The result is that by reason of commission of major corrupt practice, the election of Respondent is rendered void and is set aside. Even by reason of commission of minor corrupt practice and illegal practice and also by the major corrupt practice of roping in the services of persons who are serving the State the result of election is materially affected; by rejection of nomination form of Respondent No. 5, the result is also materially affected.

38. Having set aside the election of Respondent No. 1, the question remains regarding the prayer of the petitioner that Respondent No. 2 should be declared elected. This can be done if it could be shown that but for the votes obtained by corrupt or illegal practices by Respondent No. 1, Respondent No. 2 would have obtained a majority of valid votes. Big guns of canvassers like Shri Biyani and Shri Ganesh Ram Anant cannot but tilt the scales in favour of Respondent No. 1, to the extent of 240 votes which would have gone to Respondent No. 2. There is evidence on record to show that by illegal practice of distributing pamphlets which have no name of printer and publisher and due to distribution of pamphlet printed in Shrikrishna Press and paid for by Respondent No. 1, and not shown in the return of election expenses, voters have been influenced to change sides. On this ground the Respondent No. 2 would be entitled to be declared elected as a member for Champa Constituency for Madhya Pradesh Legislative Assembly; but as already held in para 19 *supra*, the entire election is wholly void and as such the relief cannot be granted.

39. There is more cogent reason to arrive at the same result *viz.* of declaring Respondent No. 2, as duly elected. There are only two candidates in the field out of whom Respondent No. 1's election is declared void; the votes obtained by him should be regarded as thrown away. The Respondent No. 1, by reason of obtaining the services of persons serving the State of Madhya Pradesh *viz.*, the ministers Shri Biyani and Shri Ganesh Ram Anant earned the disqualification and it was a sufficient notice to all the electors who voted for Respondent No. 1. Even if the decision of corrupt practice is to be given by the Tribunal, the votes have to be thrown away. (*Vide Wakefield B & Aust*, 317 and *Tavistock*, 2 P.R. & D 5 and *Madras Municipal D.E.C.* Case No. 107.) The voters voting for Respondent No. 1 voted in a perverse manner; moreover the facts of Ministers canvassing for Respondent No. 1 were notoriously known to the voters who voted for the Respondent No. 1. Further if there are only two candidates contesting the election and the election of Respondent No. 1 is declared void Respondent No. 2 has to be declared duly elected. (*Vide Raja*

Harpalsingh V. Pandit Krishna Kant Malviya Case No. 53 in Hammond's Election Cases page 419). There are cases to the contrary but they all relate to the situations when there were more than two duly nominated candidates (and there was no certainty of the other candidate withdrawing being a dummy candidate, like the one in the present case, as conceded by the Respondent No. 1). There would be no purpose in declaring void the election of a candidate who is guilty of having committed corrupt practice, and not declaring the other candidate as duly elected. The Constituency has been unrepresented so far by a duly elected candidate, as opposed to candidate against whom election petition had once succeeded and who has been held to have committed corrupt practice rendering his election void. But again, as the entire election is declared wholly void, this aspect does not arise.

40. The result is that the petition is allowed with costs. The petitioner who is a voter deserves to be awarded his full costs, as he has rendered public service of vindicating the right of electorate to free and fair election.

41. Under section 99, a duty is cast on the Tribunal to give a finding that corrupt and illegal practice has been committed by the candidate or his agents or by any other person proved to have done so at the trial. There is no hesitation in finding that Respondent No. 1 has committed the corrupt practice under section 123(8), 124(4) and 125(3) and has entailed disqualification from being a member of Legislature for a period of six years, under section 140 of the Representation of the People Act 1951, for corrupt practices under section 123(8) and 124(4) and for a period of four years for illegal practice under section 125(3) of the Representation of the People Act 1952.

42. Similarly Shri Brijlal Biyani and Shri Ganesh Ram Anant have acted as accomplices of Respondent No. 1, in abetting the procurement or obtaining the services of the persons serving the State; if they had not abetted the corrupt practice, the conduct at the most of Respondent would have remained at the state of attempt. They are the agents under Election Law of Respondent No. 1, no notice is necessary under section 99(1) (i) to Shri Biyani and Shri Ganesh Ram Anant as they are being dealt with as agents of Respondent No. 1. They are also disqualified for a period of six years under section 140 of the Representation of the People Act 1951, from being members of the Legislature of the State. Though regretfully but for maintaining the high tone in elections of removing any additional weight of insignia of State Livery, such orders disqualifying the persons serving the State have to be passed; this can be avoided in future by issuing the declaration exempting the Ministers from the effects of section 123(8) of the Representation of the People Act, 1951.

43. The order would be incomplete unless it is recorded that high tone of advocacy was shown by Counsel appearing for both the sides, at all stages.

Dated the 21st October, 1954.

(Sd.) B. R. MANDLEKAR, *Member.*
Election Tribunal, Raipur.

ORDER OF THE TRIBUNAL

In terms of the views of the majority of the Members of the Tribunal, it is ordered that the petition is dismissed and the petitioner will bear his own costs and will pay to the Respondent No. 1, all the costs incurred by him in the proceedings. Counsel's fee on each side allowed to the extent of Rs. 1,000 if certified. The amount of Rs. 184/8/- incurred on account of charges for the publication of the petition in the State Gazette will be paid to the State Government of Madhya Pradesh out of the petitioner's security-deposit and the rest of the security-deposit will be payable to the Respondent No. 1 towards his costs.

Dated the 21st October, 1954.

(Sd.) T. R. GOSEWADE, *Chairman.*

(Sd.) M. BAJPAI, *Member.*

(Sd.) B. R. MANDLEKAR, *Member.*

SCHEDULE OF COSTS

Particulars	Petitioner			Respondent		
	Rs.	a.	p.	Rs.	a.	p.
1. Stamp for application/memo. of appeal		
2. Stamp for powers	4	0	0	3	0	0
3. Service of pressman	42	8	0	13	8	0
4. Pleader's fees on Rs. as per certificate	500	0	0	1,000	0	0
5. Other Costs—						
(1) Commissioner's fee	85	0	0	..		
(2) Exhibits	4	6	0	..		
(3) Writing Charges		
(4) Miscellaneous applications with affidavit.	5	0	0	..		
6. D. M. of witnesses	167	10	0	41	2	0
TOTAL	808	8	0	1,057	10	0

(Sd.) T. R. GOSEWADE, *Chairman*(Sd.) M. BAJPAI, *Member*(Sd.) B. R. MANDLEKAR, *Member.*

[No. 82/10/53/18381.]

By Order,

K. S. RAJAGOPALAN, *Asstt. Secy.*